

\$~48

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 14th September, 2015

+ **CRL.M.C. No.3728/2015**

SANJAY KUMAR JUTSHI ALIAS BUNTY Petitioner
Represented by: Mr. Bankim K. Kulshreshtha
and Mr. Harish Nautiyal,
Advocates.

Versus

STATE NCT OF DELHI Respondent
Represented by: Mr. Amit Chadha,
Additional Public Prosecutor
for the State with SI L.
Sharma, STF/Crime Branch,

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A.No. 13213/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. No.3728/2015 & Crl. M.A.No. 13212/2015

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks setting aside of the order dated 20.07.2015 passed by the learned Trial Court, whereby the petitioner was confined to close the cross-examination of Inspector Ram Avtar (PW37)

and Shri Vidya Prakash (PW7) and for expunging the remarks made against the counsel for the petitioner during cross-examination of PW37 on 14.05.2015.

2. Pursuant to directions dated 29.06.2015 passed by this Court in Crl. M.C. No.2545/2015, application filed by the petitioner under Section 311 Cr.P.C. was taken up for disposal by the learned Trial Court. Accordingly, the said application qua Inspector Rajinder Bhatia (PW10) was allowed and the same was dismissed for recalling PW7 and PW37.

3. As regards recalling of Inspector Ram Avtar (PW37) is concerned, while rejecting the same, the learned Trial Court recorded that his cross-examination was closed on 14.05.2015 with directions that in case, any material question appears to have been asked from this witness, counsel for the petitioner shall make appropriate application, which shall be considered after hearing arguments of the learned Additional Public Prosecutor as well.

4. However, it would be appropriate that in case the petitioner asks the repeated questions, the learned Trial Court may reject the same and if any other question is asked, the same may be allowed or disallowed by the learned Trial Court after recording the same.

5. In view of the above observations, the order dated 20.07.2015 rejecting recalling of Inspector Ram Avatar (PW37) is hereby set aside and the learned Trial Court is directed to give an opportunity to the petitioner to cross-examine the said witness.

6. So far as application under Section 311 Cr.P.C. with respect to

recalling of Vidya Prakash (PW7) is concerned, the learned counsel for the petitioner submits that cross-examination of PW7 was closed for the reason that the petitioner has asked some questions on procedure, being not permissible.

7. I note, the learned Trial Court has not recorded such questions put by the petitioner and has closed the cross-examination of PW7.

8. Keeping in view the observations made above, the learned Trial Court is directed to allow the petitioner to cross-examine PW7 and if the petitioner asks the questions which are not permissible, the Trial Court may reject the same after recording.

9. In view of the above, order dated 20.07.2015 qua PW7 is hereby set aside.

10. Learned counsel for the petitioner has pointed out that during cross-examination of Inspector Ram Avtar (PW37), the learned Trial Court has made observations against the counsel for the petitioner by stating that the “questions does not appear to be sensible in view of the objections of learned APP for State”.

11. This Court is of the considered view that instead of writing the word ‘sensible’, the learned Trial Court should have rejected the same by recording irrelevant. Therefore, I expunge the aforementioned remark made against the counsel for the petitioner accordingly.

12. In view of the above, the petition alongwith pending application is disposed of.

13. A copy of this order be given *dasti* to the learned counsel for the parties.

**SURESH KAIT
(JUDGE)**

SEPTEMBER 14, 2015
sb