

\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on: 30th November, 2015

+ CRL.M.C. 4626/2015

SANJAY JAIN

..... Petitioner

Represented by: Mr. Vijay Kr. Aggarwal, Adv.
with Mr. Neeraj Kr. Jha, Ms. Barkha Rastogi
and Mr. Nitin Kr. Singh, Advs.

Versus

STATE & ANR

..... Respondents

Represented by: Mr. Izhar Ahmad, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A.16586/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. 4626/2015

1. Vide the present petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks setting aside of the impugned order dated 27.06.2015 whereby the learned trial court dismissed the application under section 311 of the Cr.PC moved by the petitioner.

2. Ld. Counsel appearing on behalf of the petitioner submits that the previous counsel of the petitioner had appeared on behalf of the accused no. 1, 2 (petitioner herein), 3 & 5, who cross-examined CW-1, namely,

Ajay Tandon on 23.05.2014. The said counsel put suggestions qua the other accused person but did not put any suggestion for the petitioner herein. Thereafter, petitioner changed the said counsel. On perusal of the cross-examination it revealed that there are no suggestions put qua the petitioner. Thus, it will affect his case.

3. Ld. Counsel has drawn attention of this Court to cross-examination dated 23.05.2015 to show that the said counsel has not put any suggestions to the said witness.

4. However, the fact remains that the complaint was filed before the trial court in the year 2012 and despite passing of more than three years, the case is at the stage of recording statement of accused under section 313 Cr.PC.

5. Accordingly, learned trial court in the impugned order has recorded that it took nearly two years, and nearly 10 dates of hearings, to complete the cross-examination of one complainant witness. Now merely because a new counsel has been engaged by the petitioner who has found some lacunas in the cross-examination of the complainant witness, is not a ground to allow the application under section 311 Cr.PC.

6. After hearing the counsel for the petitioner and on perusal of the impugned order, I find no discrepancy in the view taken by the learned trial court. However, it is established by the counsel for the petitioner that there were no suggestions put to CW-1 qua the petitioner by the earlier counsel.

7. It is not in dispute that the purpose of the trial is to give

opportunities to both the parties to put their case and thereafter the court gives its opinion. In the present case the earlier counsel appeared on behalf of four accused persons, including the petitioner herein. However, no suggestions were put to the said witness on behalf of the petitioner. Therefore, I am of the considered view that let the petitioner be given one and the last opportunity to put only suggestions to CW-1 with cost of Rs.25,000/- to be paid to the complainant.

8. In view of the above, the present petition is allowed.

9. A copy of this order be given *dasti* to the learned counsel for petitioner.

Crl. M.A.16585/2015 (for stay)

Dismissed as infructuous.

NOVEMBER 30, 2015
RS/jg

SURESH KAIT
(JUDGE)