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

DECIDED ON : 12th FEBRUARY, 2016

+ **CRL.M.C.122/2016 & CRL.M.A.Nos.514/2016 & 515/2016**

PROSECUTRIX Petitioner.

Through : Ms.Vrinda Grover, Advocate with
Ms.Ratna Appnender, Advocate.

versus

STATE OF NCT DELHI & ANR. Respondents

Through : Ms.Richa Kapoor, ASC with
Mr.Raghvinder Varma, APP.
Ms.Nitya Ramakrishnan, Advocate
with Mr.Ashwath Sitaraman,
Mr.Shivanshu Singh &
Mr.Prashanto Sen, Advocates for
R2.
W/SI Seema.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.Garg, J. (Oral)

1. Present petition under Section 482 Cr.P.C. has been filed by the petitioner 'X' (assumed name) to challenge the legality and correctness of an order dated 09.12.2015 of learned Addl. Sessions Judge declining to recall PW-12 (Ashish Singh) under Section 311 Cr.P.C. for re-examination by the learned Addl. Public Prosecutor. Petition is contested by respondent No.2. Status report is on record. Learned Addl. Standing Counsel for the respondent / State has supported the petitioner.

2. I have heard the learned counsel for the parties and have examined the file. It is a matter of record that the respondent No.2 is facing trial in SC No.118/2015 arising out of FIR No. 273/2015 registered under Section 376 IPC at PS New Friends Colony. The said FIR was lodged on the petitioner's complaint. The prosecution examined PW-12 (Ashish Singh) on 08.10.2015. After the cross-examination was over, learned Addl. Public Prosecutor wanted to reexamine the witness as certain new facts had emerged in his evidence. Learned Trial Court declined the request. Subsequently, an application under Section 311 Cr.P.C. read with Section 138 Indian Evidence Act for the purpose of recalling and re-examining PW-12 (Ashish Singh) was moved. By the impugned order, it was dismissed.

3. During the course of arguments, learned counsel for the parties agreed that PW-12 (Ashish Singh) be recalled for re-examination without prejudice to their respective rights / claims. It was further agreed that learned Addl. Public Prosecutor shall re-examine PW-12 (Ashish Singh) on certain facts revealed by the witness in his examination. It was agreed that the witness shall be re-examined regarding (a) timings mentioned in the evidence as PW-12; (b) the fact that before the prosecutrix left the house of the accused, she hugged him and said bye to

them and (c) the text message incorporated in the evidence purportedly sent to the witness's wife from the accused's house. It was further agreed that Addl. Public Prosecutor will be at liberty to put 'suggestions' as deemed fit to the witness.

4. Considering the facts and circumstances of the case, PW-12 (Ashish Singh) shall be recalled for re-examination by learned Addl. Public Prosecutor on the date fixed i.e. 22.02.2016. Learned Addl. Public Prosecutor will be at liberty to re-examine him on the facts mentioned above and put suggestions as deemed fit. This is without prejudice to the rights / claims of the parties.

5. The revision petition stands disposed of in the above terms. Pending applications also stand disposed of.

6. Copy of the order be sent to the Trial Court for information immediately. Copy of the order be given '*dasti*' to the petitioner as well as respondent No.2.

FEBRUARY 12, 2016 / tr

**(S.P.GARG)
JUDGE**