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

+ **CRL.M.C. 220/2016**

ABDUL QAHAR & ANR

..... Petitioners

Represented by: Mr. Danish Aftab Chowdhury,
Adv.

Versus

STATE

..... Respondent

Represented by: Mr. Ashish Dutta, APP for State.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

ORDER

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27.01.2016

+ **CRL.M.C. 220/2016**

1. Vide the present petition, petitioners seek directions thereby setting aside the order dated 30.11.2015, passed by Id. Metropolitan Magistrate in case FIR no. 121/1998 registered at PS-Sadar Bazar, for the offences punishable under Sections 420/120B IPC whereby the application under Section 311 Cr.P.C. filed by the petitioners for recalling of the prosecution witnesses has been dismissed.

2. The present petition has been filed on the ground that the petitioners earlier engaged Mr. Kamallesh Sharma, Adv., who never appeared before the Court since 22.05.2009. Thereafter, the said Advocate expired in the year 2013 and the witnesses nos. 5 and 6 were cross-examined by Mr. A.K. Dubey, Adv. on behalf of co-accused Azizur Rehman and not on behalf of the petitioners and the said Azizur Rehman also died on 24.02.2015.

3. Ld. Counsel for the petitioners submits that ld. MM has dismissed the application of the petitioners on the ground that Mr. A.K. Dubey had, in fact, cross-examined the witnesses mentioned above on behalf of the petitioners.

4. Pursuant to order dated 19.01.2016, petitioners have filed some documents and vakalatnamas, which are on record. On perusal of the documents, it is established that the petitioners never engaged Mr. A.K. Dubey or any other counsel to represent their case till they engaged Mr. Danish Aftab Chowdhury, Adv. on 20.10.2015.

5. In view of the facts recorded above and in the interest of justice, petitioners are allowed to cross-examine PW5 and PW6 on the date fixed by the Trial Court and no adjournment shall be granted to the petitioners for the said purpose.

6. Consequently, the order dated 30.11.2015 is hereby set aside to that extent.

7. Accordingly, the petition is allowed.

Crl. M.A. 937/2016

Dismissed as infructuous.

SURESH KAIT, J

JANUARY 27, 2016

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