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

+ **CRL.REV.P. 120/2016 & CrI.M.A.No.2641/2016**

MUKUL BHADANA

..... Petitioner

Through: Mr.Manu Sharma and Mr.Abhir Datt,
Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms.Alpana Pandey, APP for the State.
Mr. B.S.Joon, Mr.Varun Chugh and
Mr.Neeraj Balhara, Advocates for the
complainant.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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22.03.2016

CRL.REV.P. 120/2016

1. This revision petition has been preferred by the petitioner against the order dated 21.12.2015 whereby the application filed by the petitioner for summoning Sh.Bhagat Singh as defence witness, has been dismissed by the learned Trial Court.

2. The operative part of the impugned order reads as under:

'On the first date of hearing, when the matter was fixed for defence evidence, no step was taken by the accused to summon the witness and application was only filed on the date fixed with the wrong averments that the witness has been dropped by the

prosecution while the record suggests that the said witness was not traceable during the prosecution evidence. Further, the statement of the witness already on record u/s 161 Cr.P.C. suggests that he was the witness of recovery of Prosecutrix. On that point, witnesses including the complainant have already been examined and accused was having ample opportunity to cross examine the said witnesses. Thus, the present application for summoning Sh. Bhagat Singh as defence witness appears to be only for the purpose of delay of the trial of the case. Further allowing the prosecution witness to appear as defence witness when witness did not appear during the prosecution evidence and when it was known to the accused that witness has shifted at the address of Sadik Nagar, it was the duty of the accused to place his fresh address on record and therefore, at this stage, if the witness is allowed to be examined as defence witness, it would otherwise defeat the ends of the justice in the circumstances discussed hereinbefore.

Thus, the application in hand is hereby dismissed. No other witness is sought to be examined on behalf of accused Mukul Badana. Hence, DE stands closed.

Put up for final arguments on 08.1.2016 at 02.00 pm.'

2. Mr.Manu Sharma, Advocate for the petitioner submits that matter is listed before the learned Trial Court on 29th March, 2016 for final arguments. The petitioner only desires one opportunity to produce the witness namely Sh.Bhagat Singh on that date and there is no intention by the petitioner to delay the trial.

3. On behalf of State, it has been submitted that despite best efforts, the witness Sh.Bhagat Singh could not be traced at the stage when prosecution evidence was going on but after the accused was released on bail, this witness has surfaced. However, it is submitted that Sh.Bhagat Singh may be permitted to be examined as defence witness on the date already fixed in the

matter before the learned Trial Court and the witness will be cross examined by him on the same day.

4. Mr.B.S.Joon, learned counsel for the complainant submits that on assurance of the petitioner to produce the witness namely Sh.Bhagat Singh on the date already fixed before the learned Trial Court i.e. on 29.03.2016, the complainant has no objection if the petitioner is allowed to examine Sh.Bhagat Singh in his defence on the date already fixed.

5. In view of the submissions made on behalf of the parties, the petition is allowed to the extent that petitioner is allowed to produce Sh.Bhagat Singh as defence witness. It is made clear that petitioner shall produce the witness Sh.Bhagat Singh on 29th March, 2016, date already fixed, for recording of his statement and if the petitioner fails to produce the witness on that date, no further opportunity shall be granted to him for this purpose on any ground whatsoever except if the concerned Presiding Officer happens to be on leave on that date and in that event, the matter shall be adjourned for the next working day.

6. With above directions, the revision petition stands disposed of.

As prayed copy of the order be given dasti to learned counsel for the parties under the signature of Court Master.

PRATIBHA RANI, J.

MARCH 22, 2016

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