

\$~33

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

Judgment delivered on: 04th April, 2016

+

CRL.M.C. No.1311/2016

SIDHARTH GROVER

..... Petitioner

Represented by: Mr.Ram Jethmalani, Sr
Adv with Mr.Manu
Sharma, Mr.Himanshu
Pal, Mr.Abhir Datt,
Mr.Ali Jeth Malani,
Ms.Ridhima Mandhaer,
Mr.Anirudh Anand,
Mr.Chirag Madan, &
Mr.Ajay Awasthi, Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr.Amit Ahlawat, APP
for the State.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A.No.5604/2016 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. No.1311/2016

1. Notice issued.

2. Mr.Amit Ahlawat, learned APP accepts notice on behalf of the State.
3. With the consent of learned counsels for parties, instant petition is taken up for disposal.
4. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner has challenged the order dated 17.02.2016 whereby learned Trial Court has dismissed the application of the petitioner under Section 311 Cr P C for recalling of two witnesses for their cross-examination.
5. It is admitted case that the petitioner is facing trial in case FIR No.427/2013 registered at police station Safdarjung Enclave, New Delhi wherein there are 35 prosecution witnesses and out of which 12 have already been examined. On 20.11.2015 PW11 and PW12 namely Sri Narain and Shri Mukesh Nagar respectively were examined, but duo could not be cross-examined due to non-presence of main counsel for petitioner.
6. Mr.Jethmalani, learned senior counsel appearing on behalf of petitioner submits that petitioner is ready to pay the cost for recalling of afore noted two witnesses if one opportunity is afforded to petitioner.
7. He further submits that there would be no delay in trial as after the cross-examination of afore noted witnesses, the petitioner would like to cross-examine the Investigating Officer of the case and rest of

the prosecution witnesses are not going to be cross-examined on behalf of petitioner.

8. Learned APP for the State has opposed the present petition on the ground that inavailability of main counsel could not be a ground for recalling of said witnesses.

9. It is a settled law that fair trial is right of every accused and if on a particular date, counsel for petitioner was not available, it was the duty of learned Trial Court to ensure that the cross-examination is to be conducted by giving opportunity may be subject to costs. It is also admitted that PW11 and PW12 have not been cross-examined on behalf of petitioner before learned Trial Court.

10. Keeping in view the facts of the case and in the interest of justice, I hereby set aside the impugned order dated 17.02.2016 with direction to learned Trial Court that only one effective opportunity be granted to petitioner for the purpose of cross-examination of PW11 & PW12, subject to cost of Rs.25,000/- each to be deposited in favour of Delhi High Court Legal Services Committee within a week.

11. On placing the cost deposit receipt by petitioner, the process of recalling of both witnesses shall be issued by learned Trial Court. It is also made clear that on appearance of both witnesses before learned Trial Court, they shall be cross-examined on the same date.

12. In above terms, instant petition is allowed and disposed of.

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

Crl. M.A.No.5603/2016 (for stay)

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

APRIL 04, 2016

M

