

\$~30

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

+ CRL.M.C. 2531/2016 & Crl.M.A. 10876/2016

KARTAR SINGH

..... Petitioner

Represented by: Mr. Sunil Dalal with Mr. Rohit
Kumar, Advs.

versus

STATE

..... Respondent

Represented by: Mr. Ravi Nayak, APP with ASI
Ram Dev, PS G.K-I.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

%

28.09.2016

1. Aggrieved by the order dated 16th March, 2016 passed by learned Metropolitan Magistrate partly allowing the application of the petitioner under Section 311 Cr.P.C. by permitting recall of PW-6 Anil Khosla for examination and rejecting the prayer of petitioner to recall PW-4 Inderjeet Kehr for further cross-examination, the petitioner prefers the present petition.
2. Learned counsel for the petitioner submits that though on 24th June, 2015, PW-4 was examined, cross-examined and discharged however in cross-examination some relevant questions with regard to the agreement which was exhibited as Ex.PW-4/A could not be put. Since the same would adversely affect the rights of the petitioner as the case of the petitioner is that the agreement is ante-dated and a forged document thus the petitioner requires to further cross-examine PW-4.
3. In *Godrej Pacific Tech. Ltd. v. Computer Joint India Ltd.*, (2008) 11

SCC 108 it was held:-

“6. “26. In this context, reference may be made to Section 311 of the Criminal Procedure Code which reads as follows:

‘311. *Power to summon material witness, or examine person present.*— Any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.’

The section is manifestly in two parts. Whereas the word used in the first part is ‘may’, the second part uses ‘shall’. In consequence, the first part gives purely discretionary authority to a criminal court and enables it at any stage of an enquiry, trial or proceeding under the Code (a) to summon anyone as a witness, or (b) to examine any person present in the court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the court to arrive at the truth by all lawful means and one of such means is the examination of

witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.”

4. Section 311 Cr.P.C. mandates the Court to call or recall a witness for the just decision of the case. Considering the nature of cross-examination to be further put to to the witness, I deem it fit to grant one opportunity to the petitioner to cross-examine PW-4 Inderjeet Kehr. Learned Trial Court is directed to recall PW-4 Inderjeet Kehr for one day, subject to the petitioner paying costs of ₹1000/- to the witness on the said date when witness is called and no adjournment on whatever ground will be granted to the petitioner or his counsel when the witness PW-4 is present for further cross-examination.

5. Petition is disposed of.

6. Order dasti.

MUKTA GUPTA, J.

SEPTEMBER 28, 2016
‘v mittal’