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

+ **CRL.M.C. 4126/2016**

JAI SINGH YADAV

..... Petitioner

Through: Mr. Vishal Raj Sehipal, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Anita Abraham, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

04.11.2016

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Crl.M.A. No.17190/2016

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL.M.C. 4126/2016

Issue notice. Ms. Abraham accepts notice.

The petitioner has preferred the present petition under Section 482 Cr.P.C. read with Section 311 Cr.P.C. to assail the order dated 08.04.2016 passed by the learned ASJ, Rohini dismissing the petitioner's application under Section 311 Cr.P.C., whereby the petitioner sought recall of PW-18, the I.O. for further cross-examination.

The petitioner is the accused in case FIR No.107/2013. PW-18/ I.O. was initially examined and partially cross-examined on 22.09.2014. Thereafter several dates were given in the case when either the petitioner or his counsel were not present and even PW-18 appears to have not been available on 3 occasions on account of her being on maternity/ child care leave. It appears that PW-18 was present before the Court on 19.09.2015 despite her being on sanctioned child care leave. On the same date, the petitioner accused sought adjournment on the ground that his counsel was not available. Consequently, PW-18/ I.O. was discharged since she was not cross-examined despite being tendered for the said purpose.

The petitioner moved the application under Section 311 Cr.P.C. only on or about 08.04.2016, i.e. after a lapse of nearly 7 months. This application has been dismissed by the learned ASJ by the impugned order by observing that several opportunities have been afforded to the petitioner to cross-examine the I.O. but he did not avail of the same. This order also shows that the petitioner did not cross-examine PW-19 the Senior Scientific Officer, who was present, and consequently, he was also discharged.

Learned counsel for the petitioner submits that after passing of the order dated 19.09.2015, the petitioner had changed two counsels. He submits that prior to passing of the order dated 19.09.2015, on several dates, PW-18 did not appear on account of her being on maternity / child care leave. Learned counsel submits that since PW-18 is a police witness being the I.O., she may be directed to be produced only on one day when she shall be cross-examined and no adjournment shall be sought by the petitioner accused.

Even though the record shows that the petitioner has been rather

negligent and casual in cross-examining the prosecution witnesses, in the interest of justice, he is granted one last opportunity to cross-examine PW-18 on a single day.

Let PW-18 be produced for cross-examination on 17.11.2016, the date already fixed – though for the purpose of final argument, on which date the petitioner accused shall cross-examine PW-18. In case she is not so cross-examined, she shall stand discharged and the right of the petitioner to cross-examine her shall stand closed. The Trial Court shall take the matter early enough in the day so that the remaining cross-examination of PW-18 gets concluded on the same day.

The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

NOVEMBER 04, 2016

B.S. Rohella