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

DECIDED ON : NOVEMBER 25, 2016

+ **CRL.M.C. 4411/2016 & CrI.M.A.Nos.18409-10/2016**

PRADEEP & ANR.

..... Petitioners

Through : Mr.Jitendra Sethi with Mr.Akash
Sharma and Mr.Ambar Tewari,
Advocates.

Versus

STATE NCT OF DELHI

..... Respondent

Through : Ms.Meenakshi Dahiya, APP.
SI Pradeep Sharma, PS Rajinder
Nagar.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J. (ORAL)

1. Present petition under Section 482 Cr.P.C. has been filed by the petitioners to challenge the legality and correctness of an order dated 10.11.2016 of learned Additional Sessions Judge whereby the application moved under Section 311 Cr.P.C. to recall PW-14 (SI Ritesh Kumar) was dismissed.

2. I have heard the learned counsel for the parties and have examined the file. PW-14, the initial Investigating Officer, was present on 10.11.2016 to record statement. The petitioner's counsel was not available

that day. Since the witness had to come from Bihar, the Trial Court appointed *Amicus Curiae* to cross examine him.

3. PW-14, being the Investigating Officer is a material witness. The petitioner must not suffer because of absence of his counsel that day. The *Amicus Curiae* appointed by the Trial Court on 10.11.2016 itself was not in a position to effectively cross-examine the witness being unaware of the facts of the case, as urged.

4. Considering the facts and circumstances of the case, PW-14 (SI Ritesh Kumar) is ordered to be recalled for cross-examination. The petitioner shall be given only one effective opportunity to cross-examine the witness. The petitioner is burdened with costs of ₹15,000/- to be paid to the witness PW-14 (IO Ritesh Kumar) as his expenses to travel from Bihar.

5. The petition stands disposed of in the above terms. All pending application(s) also stand disposed of.

6. Trial court record (if any) be sent back forthwith along with the copy of the Order.

(S.P.GARG)
JUDGE

NOVEMBER 25, 2016

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