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

Judgment dated: 16th January, 2017

+ CRL.M.C. 169/2017
ANURAG SOOD

..... Petitioner

Through: Ms.Sumita Kapil, Adv. with
Ms.Poojaswami, Adv.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms.Kusum Dhalla, APP for State
Inspector Divesh Kumar, Police Station-
Kanjhawala

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

I.S.MEHTA, J (ORAL)

CRL.M.A.786/2017

Exemption granted, subject to all just exceptions.

Application stands disposed of.

CRL.M.C. 169/2017 & CRL.M.A.787/2017

1. This is a petition under Section 482 Cr.P.C challenging the impugned order dated 3rd November, 2016 passed by learned ASJ-II, North-West, Rohini, Delhi in case title “State versus Anurag Sood” FIR No. 1042/2014, under Sections 397/392/34 IPC, registered at Police Station-Kanjhawala dismissing the application filed by petitioner under Section 311 Cr.P.C.
2. It is submitted by learned counsel for the petitioner that the impugned order dated 3rd November, 2016 is bad in law. She has submitted that the case pertains to robbery of Rs.8,000/- and mobile phone; which is alleged

to be recovered from the petitioner after about 19 days. She has further submitted that the complainant Sameer Saifi was examined as PW-9 before the Trial Court and was cross examined on 12th April, 2016. She has further submitted that later it was transpired that certain questions regarding the nature of weapon could not be put to PW-9 and has submitted that the cross-examination of PW-9 is *sine qua non*. She has further submitted that to meet the ends of justice, the impugned order be set aside and the petitioner be allowed to further cross examine PW-9.

3. Learned APP for State has vehemently opposed the contention of learned counsel for the petitioner and submitted that the petitioner was represented through counsel. He has submitted that changing of counsel by the petitioner does not confer him any right to recall PW-9 for further cross examination and prays that the present petition be dismissed.
4. What is emerging on record is that the petitioner engaged a new counsel who moved an application under Section 311 Cr.P.C seeking recalling of PW-9. The learned Trial Court rejected the application on the ground that the application so moved is due to ulterior motive and design planned by the petitioner and is not bonafide.
5. The petitioner is seeking permission for recalling of PW-9 on the point of nature of weapon used. I am of the considered view that the conclusion given by the Court below is not correct as it is the cross-examination which forms the evidence and on the basis of evidence available on record; it is to be determined whether the petitioner has committed the offence or not.
6. Resultantly, the impugned order dated 3rd November, 2016 is hereby set aside and the petitioner is given right to further cross-examine PW-9 who shall be confining his questions with regard to the nature of weapon used.
7. The present petition is allowed and disposed of accordingly. All pending

application(s) (if any) also stand disposed of.

8. Copy of this order be given *dasti*.

I.S. MEHTA
(JUDGE)

JANUARY 16, 2017/radhika

