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

+ CRL.M.C. 1094/2017

MS GAGANDEEP KAUR Petitioner

Through Mr.Mahavir Singh, Adv.

versus

STATE & ANR Respondent

Through Mr.Panna Lal Sharma, APP.
Mr.Mudit Jain and Mr.Neeraj Kumar
Jha, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% **24.03.2017**

Crl.M.A. 4514/2017 (Exemption)

Application is allowed subject to just exceptions.

Crl.M.A. 4515/2017 (Delay in re-filing)

Application is allowed and delay in re-filing is condoned.

Crl.M.C. 1094/2017

The present petition has been filed with the prayer to set aside the order dated 09.12.2016 passed by the learned ASJ in revision petition arising out of order dated 05.09.2016 passed by the learned Magistrate vide which, in view of the order dated 16.10.2015 passed by this Court in Crl.M.C. 3804/2015, the application filed by the petitioner-herein under Section 311 Cr.P.C. was dismissed. Vide order dated 16.10.2015, this Court permitted the respondent no.2-M/s Kushal Infraproject Industries (India) Ltd. to bring the original of

CW1/2 on record. Being aggrieved by the order passed by the learned Magistrate, the petitioner-herein filed a revision petition which was dismissed vide order dated 09.12.2016.

The facts emerging from the record is that a complaint dated 09.12.2011 was filed by the respondent no.2 against the petitioner-herein. Thereafter, the complainant remained pending and ultimately application moved by the respondent no.2 under Section 311 Cr.P.C. was dismissed against which the respondent no.2 approached this Court and this Court vide order dated 16.10.2015 disposed of the petition while observing as under :

“7. In the given facts and circumstances of the case, it is evident that the case of the petitioner/complainant is based upon the agreement to sell Ex.CW1/2, the original of which he wants to produce. No cross examination is required to be done with respect to this document as the copy of the same has already been exhibited and the cross-examination with respect to the same has already been done except the fact that the original of the same was not on record.

8. In the given facts and circumstances of the case, this court is of the considered opinion that the ends of justices would be secured if the petitioner is permitted to bring the original of CW1/2 on record for just decision of the case. However, it is made clear that the concession granted to the petitioner/complainant is subject the petitioner not seeking any adjournment for advancing arguments before the Trial Court.”

As submitted by the counsel for the petitioner, the petitioner had approached the Hon'ble Supreme Court against the order dated

16.10.2015 passed by this Court which was dismissed as withdrawn. So in all the circumstances, the order dated 16.10.2015 attained finality. The trial court while affording the opportunity of cross-examination complied with the order passed by this Court which was upheld.

Now, the counsel for the petitioner has submitted that the order of this Court needs to be clarified but the fact remains that the present petition has been filed for set asiding the order dated 09.12.2016 passed by the revisional court.

Apparently, there is no illegality or infirmity in the order dated 05.09.2016 passed by the trial court and the order dated 09.12.2016 passed by the revisional court. The order dated 16.10.2015 passed by this Court has already attained finality.

In the above mentioned facts and circumstances, no ground is made out by the petitioner in support of the present petition. The present petition is accordingly dismissed.

P.S.TEJI, J

MARCH 24, 2017
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