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

**DECIDED ON : MARCH 31, 2017**

+ **CRL.M.C. 179/2016 & CRL.M.A.Nos.17733/16 & 702/16**

**ONKAR SINGH CHADHA & ORS.**

..... Petitioners

Through : Mr.Anshul Garg, Advocate.

**VERSUS**

**GURPREET SINGH DHODI**

..... Respondent

Through : Mr.Manjit Singh Ahluwalia,  
Advocate.

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

**S.P.GARG, J. (ORAL)**

1. Present petition under Section 482 Cr.P.C. has been preferred by the petitioners to challenge the legality and correctness of an order dated 20.11.2015 of learned Metropolitan Magistrate whereby application under Section 311 Cr.P.C. moved by the respondent to examine himself in pre-charge evidence was allowed. The petition is contested by the respondent.

2. I have heard the learned counsel for the parties and have examined the file. Undisputedly, the petitioners were summoned to face trial for commission of offences under Sections 406/420/506/120-B IPC in a

complaint case by an order dated 27.01.2004. The respondent had examined himself as CW-1 besides examining CW-2(Yashupal) and CW-3 (Kulvinder Singh) in pre-summoning evidence. It is also not in dispute that the complainant did not examine himself in pre-charge evidence though CW-2(Yashupal) and CW-3 (Kulvinder Singh) were examined. The complainant was cross-examined at length on various dates by the learned counsel for the petitioners. When the case was fixed for arguments on charge, it revealed that the respondent had not examined himself as CW-1 in pre-charge evidence.

3. I find no illegality or material irregularity in the impugned order whereby the respondent was permitted to be examined as CW-1 in pre-charge evidence. The Trial Court has noted in the impugned order that an error had occurred during court proceedings and its liability cannot be fastened on the complainant alone. It further noted that the parties should not suffer on account of technicalities and the matter needs to be decided on merits.

4. I find no valid reasons to deviate from these findings/ observations. The complainant by getting himself examined in pre-charge evidence is not to introduce a new case or fulfill lacunae. In the application itself, he has prayed to allow him to adopt the evidence recorded in pre-summoning evidence. It was the duty of the court to ascertain if the complainant had recorded examination-in-chief in pre-charge evidence before permitting the petitioners to cross-examine him. However, due to inadvertence, seemingly it did not happen. For the mistake of the court, the respondent should not suffer. Moreover, the petitioners did not themselves

bring it to the notice of the Court that there was no examination-in-chief of the respondent in pre-charge evidence before cross-examining him.

5. I find no merit in the present petition and it is dismissed.
6. All pending application(s) also stand disposed of.

**(S.P.GARG)**  
**JUDGE**

**MARCH 31, 2017**  
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