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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 795/2017
MOHD UMAR

..... Petitioner

Through: Mr. A.K. Pandhy, Adv. for revisionist.

Versus

STATE (GOVT NCT OF DELHI)

..... Respondent

Through: Mr. Ravi Nayak, APP for State with SI
Rajendra Dhaka, P.S. Vikas Puri.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **02.11.2017**

This petition seeks revision of the order passed by the learned ADJ, on 28.07.2017 in the petitioner's application under section 311 of the Cr.P.C. seeking recall of PW-3 & PW-4, who are the wife and son of the deceased, on the ground that relevant and material questions were not put to them during the cross-examination. The ground now sought to be raised by the petitioner is that he had in fact intimated the police about the accident; that he had nothing to do with the accident and the stolen belongings of the deceased, and that he fled from the spot because of fear of being beaten up by the public. The counsel for the petitioner submits that the petitioner fled from the spot and later informed the police because he wanted to return the missing articles. This plea, *ex facie*, was never raised before the Trial Court and appears to be an afterthought.

The Trial Court, in the impugned order, made the following observations:

" It is submitted by counsel for accused that the present

application has been filed for recalling PW-3 i.e. complainant Sushma and PW-4 Priyam (son of the complainant) for their further cross-examination as the previous counsel had not put some important questions to these witnesses. On perusal of record, it is revealed that both these witnesses were cross-examined at length by the defence counsel. It is settled law that U/Sec.311 Cr.P.C., a witness could not be recalled merely on the ground that the accused has changed his counsel and the previous counsel had not put some questions to the prosecution witnesses. The provision of Sec.311 Cr.P.C. could not be used to fill-up the lacunae. The above-said witnesses have already been cross-examined at length on behalf of the applicant/accused. No ground for their recall is made out. Accordingly, the application U/Sec.311 Cr.P.C. is dismissed.

In Rita Solanki v. Jai Solanki MANU/SCOR/38875/2017, a Division Bench of this Court on 16.08.2016 observed:

“14. We do not find any illegality whatsoever in the impugned order. The contention of the appellant/wife about engaging a new counsel can never be a ground to recall the witnesses for cross examination for the reason that if such type of pleas are accepted by the Court then there is no reason that each subsequent counsel engaged by a party would find out some flaw or other in the cross examination of a witness conducted by the previous counsel and would like to have an opportunity to cross examine a witness as per his/her perception”

The reason offered for seeking recall of the witnesses who were examined at length is not a persuasive or tenable ground.

In view of the above, this Court finds no reason to interfere with the impugned order. For the reason as recorded in the impugned order, the present petition is dismissed.

NAJMI WAZIRI, J

NOVEMBER 02, 2017/acm