

\$~32

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 4329/2017**

VEER SINGH

..... Petitioner

Through: Mr. P.K. Trehan, Adv.

versus

NIRMAL GUPTA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

%

28.11.2017

Affidavit of service has been filed by the petitioner which has been taken on record. Despite service there is no appearance on behalf of the respondent.

I have heard the learned counsel for the petitioner and perused the documents placed on record. Respondent stepped in the witness box as CW1. His examination-in-chief was recorded. Opportunity of petitioner to cross-examine CW1 was closed vide order dated 8th March, 2017. Petitioner filed an application under Section 311 Cr.P.C. for recalling the CW1 Nirmal Gupta for his cross-exemption. Vide order dated 22nd August, 2017, trial court has dismissed the application of the petitioner.

That is how the petitioner is before this Court by way of present petition under Section 482 Cr.P.C.

Learned counsel for the petitioner submits that CW1 could not be cross-examined on 22nd October, 2016 as the copy of affidavit of CW1 was not supplied to counsel for petitioner. On 2nd February, 2017 counsel for the petitioner could not appear in Court as his sister-in-law had expired. Accordingly, matter was adjourned for 8th March, 2017. On 8th March, 2017, counsel could not appear due to unavoidable reasons beyond his control. Trial court did not find this explanation sufficient for non-appearance of the counsel on 8th March, 2017 and closed the opportunity of petitioner to cross-examine the witness.

I am of the view that in case CW1 remains unexamined petitioner would suffer prejudice as his examination-in-chief would be deemed admitted. There is no reason as to why petitioner is made to suffer for the slackness of his counsel. Trial court could have given one opportunity to petitioner; more so when CW1 can be compensated in terms of costs.

Accordingly, without going into the merits or demerits of the pleas taken by the petitioner regarding non-appearance of the counsel on 8th March, 2017, in the interest of justice, one opportunity is afforded to the

petitioner to cross-examine CW1 Nirmal Gupta, subject to however, costs of ₹20,000/- to be paid to the CW1. Impugned order is set aside to this extent. Trial court shall fix a date for cross-examination of CW1 on petitioner paying costs.

Petition is disposed of in the above terms.

Dasti.

A.K. PATHAK, J.

NOVEMBER 28, 2017
ga