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

+ **CRL.M.C. 1588/2018**

BABITA & ANR

..... Petitioners

Through: Mr. Archit Upadhyay, Advocate

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. Ravi Nayak, APP for the State
ASI Rampal Singh

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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29.08.2018

The petitioners are facing criminal prosecution in Sessions Case (No.1448/2016) arising out of FIR No. 493/2013 of Police Station Sun Light Colony for offences under Sections 363/364A/34/120B, of Indian Penal Code, 1860. Besides the petitioners, there are two other accused facing the same trial, they being Ravinder and Sandeep, all stated to be in custody.

The counsel for the petitioner, Mr. Archit Upadhyay who has brought this petition had been engaged by the petitioners, he having filed *Vakalatnama* executed in May, 2016. It is stated that, prior to this, the petitioners had been provided with the services of legal aid counsel – Ms. Swati Popli – who also represented co-accused Ravinder.

The kidnapped child was examined as witness (as PW-5) on 08.07.2016. On the said date, Mr. Archit Upadhyay, Advocate was

not present, he being out of station on some personal errand. The cross-examination on behalf of the petitioners was carried out instead of and, in his lieu, by Ms. Swati Popli, also appearing on behalf of the co-accused Ravinder.

It appears that the counsel representing the petitioners felt the need to put some more questions as, according to his submissions, the entire case of the petitioners could not be brought out through the cross-examination, which had been conducted. He moved an application for recall of PW-5 for opportunity for further cross-examination under Section 311 of the Code of Criminal Procedure, 1973 (Cr.P.C). The said application was declined by the trial court by order dated 13.02.2017.

While pressing for the setting aside of the said order and seeking opportunity for further cross-examination of PW-5, the counsel for the petitioner submitted that in order to show his *bona fide*, he is ready to pay by way of a cheque, from his personal account such cost as may be imposed by the Court.

In the given facts and circumstances, it would be just and proper to afford an opportunity to the petitioners to bring out their case by effective cross-examination. The prayer is granted, subject to payment of costs of Rs. 5,000/- which shall be deposited by the counsel for the petitioner, as offered, by himself with the District Legal Services Authority, within a week. Subject to proof of such deposit being duly shown to the trial court, it will fix a date for summoning of PW-5 for further cross-examination.

Needless to add, in terms of this order only one opportunity would be granted for further cross-examination of PW-5. No request for any adjournment shall be entertained.

The petition is disposed of in above terms.

R.K.GAUBA, J.

AUGUST 29, 2018
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