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

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Judgment delivered on: 08.05.2018

+ CRL.REV.P. 282/2016

NAVNEET ARORA

..... Petitioner

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr.V. Madhukar & Mr. Aditya Kapoor, Advs.

For the Respondent : Mr. Mukesh Kumar, APP for the State with SI
Narendra Kumar

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

08.05.2018

SANJEEV SACHDEVA, J. (ORAL)

CRL.REV.P. 282/2016 & CrI.M.A.5964/2016 (stay)

1. Petitioner impugns order dated 07.12.2015, whereby, the petitioner accused was not permitted, at the time of cross examination, to confront the prosecution witness with an earlier statement alleged to have been made by the witness, in terms of Section 145 of the Indian Evidence Act, 1872.

2. The trial court applying the ratio of the judgment of Supreme Court in *State (NCT of Delhi) Vs. Mukesh* (2014) 15 SCC 661, declined the accused permission to confront the witness with an earlier audio-video recording containing the alleged statement of the witness.

3. Learned counsel for the petitioner submits that the trial court erred in denying the opportunity to the accused to confront the witness with an audio-video recording of an alleged earlier statement. He further submits that the ratio of *Mukesh (Supra)* is not applicable in the present case, in as much as, the recording to be confronted was prior to the filing of the charge sheet. However, he submits that the Supreme Court vide judgment dated 14.08.2017 in Crl. Appeal No. 1405-1406 of 2017 titled '*Jasdeep Kaur Chadha Vs. State (NCT of Delhi) & Ors.*', has held that *Mukesh (Supra)* to be *per incuriam*.

4. Section 145 of the Indian Evidence Act reads as under:-

“145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

5. Supreme Court in *N. Sri Rama Reddy and Ors. Vs. Sh. V.V. Giri*, AIR 1971 SC 1162 has held that tape recording itself is primary and

direct evidence admissible as to what has been said and picked up by the recorder and a previous statement made by a person recorded on tape can be used not only to corroborate the evidence given by the witness in Court but also to contradict the evidence given before the Court, as well as to test the veracity of the witness and also to impeach his impartiality. And further apart from being used in corroboration the evidence is admissible in respect of the other three last mentioned matters under Section 146 (1), Exception 2 to Section 153 and Section 155 (3) of the Indian Evidence Act.

6. Further the Supreme Court in *Jasdeep Kaur Chadha (Supra)* held as under:-

“6. On bare perusal of Section 145 of the Indian Evidence Act, we find that the section does not put any limitation that the previous statement must be during investigation nor creates a bar to a statement subsequent to investigation being confronted to the witness if such statement is in writing and is relevant as per the said provisions. The only requirement is the provision is that the statement should be in writing or should be reduced to writing and relevant to the matter in question.

7. No doubt, the judgment of this Court in State (NCT of Delhi) Vs. Mukesh (Supra) has expressed the view that the previous statement must be the statement made during investigation only but the said judgment is per incuriam. The view taken by the larger Bench of this Court in Tara Singh Vs. The State (Supra) has not been referred to and thus, the law laid down by the larger Bench continues to be the binding law.”

(underlining supplied)

7. Clearly in view of the above, the trial court has erred in denying the opportunity to the accused to confront the prosecution witness with an alleged earlier statement recorded on a Compact disc.

8. In view of the above, the impugned order is set aside. The trial court is directed to afford an opportunity to the accused-petitioner to confront the witness with the audio recording subject to compliance of provisions of Section 64 and if warranted, Section 65, with the safeguard of Section 65B of the Indian Evidence Act.

9. The petition is, accordingly, disposed of in the above terms.

10. Order *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

MAY 08, 2018

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