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

+ CRL.M.C. 1609/2018

SUNIL KUMAR Petitioner
Through Mr. Suraj Rathi, Adv.

versus

STATE (NCT OF DELHI) Respondent
Through Mr. Raghuvinder Varma, APP
SI Ranbir Singh, PS Nangloi

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **04.04.2018**

Crl.M.A. No. 5845/2018

Allowed subject to all just exceptions.

Crl.M.C. No. 1609/2018

Submissions have been made on behalf of the either side.

Vide the present petition, the petitioner seeks setting aside of the order dated 16.1.2018 passed by learned ASJ in Sessions Case No.57741/16 in FIR No.375/2009 under Sections 302/120B/34 Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 submitting to the effect that the opportunity of cross-examination of PW-24 i.e. SI Pawan Kumar has been declined to the present petitioner/applicant and that one opportunity for the same be granted.

During the course of oral submissions made now on behalf of the petitioner it is submitted that the counsel for the petitioner was in some difficulty. The said submission of the learned counsel for the petitioner having been in some difficulty is not mentioned in any part

of the present petition but is accepted in view of the submissions made by the learned counsel for the petitioner.

A perusal of the record indicates that whilst the right of the petitioner to cross-examine PW-24 had been previously also closed on 1.8.2017, in relation to which whereof CrI.M.C. No.3624/2017 had been filed by the petitioner and vide the order dated 12.9.2017 of this Court the petition was allowed and the petition seeking cross-examination of PW-24 was allowed to the extent that Investigating Officer SI Pawan Kumar PW-24 was allowed to be cross-examined on the next date of hearing on two documents, namely, identity card of the deceased and the admission ticket and the impugned order of the trial court dated 1.8.2017 was set aside to the said extent for the cross examination to be conducted on behalf of the petitioner on 16.9.2017.

Copy of the trial court proceedings dated 16.9.2017 are not on record. However, the copy of the proceedings dated 23.9.2017 are on record on which date it is indicated that the State had sought an adjournment. Copy of the proceedings dated 24.10.2017 are on record which do not indicate presence of PW-24. Copy of the proceedings dated 25.10.2017 are on the record which however, do not indicate the presence of PW-24, SI Pawan Kumar. Copy of the proceedings, dated 18.11.2017 is on the record which indicates the presence of PW-24 SI Pawan Kumar, however, the learned Presiding Officer was on a half day leave as a consequence the proceedings

were adjourned to 16.12.2017. Copy of the proceedings dated 16.12.2017 are on the record which indicate that one of the co-accused in the said case was absent and the matter was thus, renotified for 16.1.2018 on which date the witness PW-24 was present for cross-examination and the counsel for the accused i.e. the petitioner herein had not put in appearance to cross-examine PW-24 and thus cross-examination was closed, it having been observed that the witnesses had come from Punjab and the proceedings dated 16.1.2018, further indicate to the effect that the said witness had attended the court for around 15 dates of hearing but cross-examination could not be conducted by the counsel for the accused i.e, the present petitioner Sunil Kumar.

In view of the proceedings, dated 12.9.2017 in CrI.M.C. No. 3724/2017, in the interest of justice one last and final opportunity is granted to the petitioner herein to conduct the cross-examination of PW-24 on 5.4.2018 the date of hearing fixed before the trial Court only to the extent permitted vide order of this Court in CrI.M.C. No.3624/2017 dated 12.9.2017 subject to payment of costs of Rs.20,000/- to the witness PW-24, SI Pawan Kumar by the petitioner.

The petition stands disposed of.

Copy of this order be sent to the trial court forthwith.

Copy of the order be given dasti under the signatures of the Court Master.

ANU MALHOTRA, J

APRIL 04, 2018/aj

