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

% Judgment delivered on: 04.05.2018

\+ CRL.M.C. 2367/2018

SURENDER ..... Petitioner

versus

THE STATE NCT OF DELHI ..... Respondent

Advocates who appeared in this case:

For the Petitioner	:	Mr. Arun Chaudhary and Mr. Satish Kumar, Advs.
For the Respondents	:	Mr. Arun Kr. Sahrma, Addl. PP for the State with SI Ram Naresh

CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT
04.05.2018

SANJEEV SACHDEVA, J. (ORAL)

Crl. M.A. 8426/2018 (Exemption)

Allowed, subject to all just exceptions.

CRL.M.C. 2367/2018 & Crl. M.A. 8425/2018

1. The petitioner impugns order dated 13.03.2018 whereby the Trial Court has declined to issue fresh process for service of PWs

Janak Raj and Sunil.

2. The petitioner who is an accused had sought production of PWs Janak Raj and Sunil for the purposes of their cross-examination which was permitted and process was issued for their service.

3. Impugned order dated 13.03.2018 of the Trial Court records that the process issued to the said witnesses were received back with the report that they had left the given address. Thereafter after perusing the report of the process server, the Trial Court declined to issue fresh process.

4. Learned counsel for the petitioner submits that the petitioner has taken all steps for service of the said witnesses and it was not in his power and control to ensure their service. Accordingly fresh process be issued to secure the presence of the said witnesses.

5. In my view, the petitioner cannot be burdened with the responsibility of producing the witnesses and accused cannot be penalised for non service of summons on the prosecution witnesses. All that accused can do is to take appropriate steps which was done in the present case, however the process issued could not be served on the prosecution witnesses as they were not available at the given address. There is no fault of the petitioner.

6. In my view, the impugned order is clearly unsustainable. Order dated 13.03.2018 is set aside. The trial court is directed to issue fresh

process for securing the presence of PWs Janak Raj and Sunil and such steps as may be necessary be taken by the prosecution for securing their presence. The petition is allowed in the above terms.

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

SANJEEV SACHDEVA, J

MAY 04, 2018
'*rs*'

HIGH COURT OF DELHI
सत्यमेव जयते