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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 4522/2018 & CRL.M.A. 31531-32/2018**

SH. SUNIL KUMAR & ANR. Petitioners

Through: Mr. V.K. Sharma, Adv.

versus

STATE Respondent

Through: Mr. Ravi Nayak, APP for the State
with SI Om Prakash, PS Jagat Puri.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

% **ORDER**
07.09.2018

The petitioners are accused persons facing prosecution in criminal case (No. 7084/2016) in the Court of Metropolitan Magistrate, it having arisen out of FIR No. 584/2012 of police station Jagat Puri involving offences punishable under Sections 323/341/354/34 of Indian Penal Code, 1860 (IPC). Their application for recall of three witnesses for the prosecution (PW-1, PW-2, PW-3) for cross-examination under Section 311 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was dismissed by the trial court by order dated 07.07.2018. The petitioners invoke the jurisdiction of this Court under Section 482 Cr.P.C. to pray for the said order to be set aside and the opportunity granted for cross-examination to be granted.

The petition has been filed with copy of only the order dated 07.07.2018 whereby the application under Section 311 Cr.P.C. was declined.

It being essential to go into the background, the counsel was called upon to show the previous proceedings. He took a pass over and he has now presented copy of the proceedings recorded on 25.05.2017. The said proceedings are revealing. The witnesses had been originally examined in April, 2016. The cross-examination was deferred on the request of the defence counsel – same as the counsel representing the petitioners. On 19.10.2016, when witnesses were again present, counsel again sought adjournment on the ground he wanted to cross-examine them on the same date. It is not understood as to why such request had been made or entertained when the witnesses were present together on the said date.

Be that as it may, on next date i.e. 03.05.2017, the counsel pleaded his own illness and again took adjournment. On 15.05.2017, though the counsel was present in the court, he sought adjournment on the ground he was unable to assist since there was an election in the Shahdara Bar Association.

On 25.05.2017, when the witnesses were present and the matter was called out, request for pass-over was made on the ground counsel was yet to come. The Magistrate deferred the matter twice. In the afternoon, the Magistrate found no ground to defer the matter yet again. It was immediately after the opportunity for cross-examination had been closed taking note of the conduct of the defence that the counsel appeared. He created a ruckus in the court and disturbed the decorum of the court. Such conduct was duly noted in the proceedings recorded. To say the least, this cannot be countenanced.

Against the above backdrop, the application under Section 311 Cr.P.C. did not find favour with the Magistrate. The counsel now present

before this Court regrets his earlier conduct before the trial court. He assures and undertakes that he would not indulge in any such indecorous conduct in any court hereafter. He wants to show his sincerity by volunteering to pay by cheque the costs from his own account subject to which he seeks re-opening of the right to cross-examine. He also tenders apology. His offer to bear the costs voluntarily is accepted.

On costs of Rs. 20,000/- which shall be deposited by the counsel by cheque with the District Legal Services Authority within a week and subject to proof of such deposit being shown on the date next fixed before the trial court and tender of apology for the conduct on 25.05.2017, it shall arrange the presence of the witnesses (PW-1, PW-2 and PW-3) on a date suitable to its calendar and for them to be tendered for cross-examination by the petitioners through their counsel. It is made clear that no further request for adjournment on any ground shall be either made or entertained. In case of any default with above conditions, the right to cross-examine hereby renewed shall stand exhausted.

This disposes of the petition and the applications filed therewith.

Dasti under the signatures of Court Master.

R.K.GAUBA, J

SEPTEMBER 07, 2018

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