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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 4041/2016**

RAJESH KUMAR

..... Petitioner

Through: Mr. Hemant Kumar & Mr. Pulkit
Kaushik, Advocates.

versus

STATE

..... Respondent

Through: Mr. Ravi Nayak, APP for the State
with SI Bijender PS ACB.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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03.08.2018

The petitioner is facing prosecution in the court of Special Judge on the charge under Sections 7 and 13 of Prevention of Corruption Act, 1988 in the criminal case arising out of FIR No. 38/2014 of Anti Corruption Bureau of Govt. of NCT of Delhi. It appears during the recording of evidence constable Manoj Kumar (PW-15) was examined as a witness for the prosecution on 13.07.2016. It also appears the said police official had been entrusted with the duty during investigation to take certain exhibits to the forensic science laboratory where he had deposited the same under acknowledgement. It further appears that during his deposition which was recorded on 13.07.2016 it came to be recorded that while the case property had been in his possession it had been "tampered". The public prosecutor moved an application seeking recall of the said witness submitting that it was a case of typographical error inasmuch as the word "not" had come to be inadvertently omitted. This prayer was resisted by the petitioner but the Special Judge, by her detailed order dated 28.09.2016, considered it

just and proper in exercise of power and jurisdiction vested in her under Section 311 of the Code of Criminal Procedure, 1973 (Cr.P.C) to recall the said witness. The witness was further examined in this light on 28.09.2016. Thereafter, he was tendered to the petitioner's counsel for cross-examination. The petitioner's counsel, however, took adjournment and thereafter, the present petition under Section 482 Cr.P.C. was filed, questioning the recall of the witness against the above backdrop.

It is pointed out by the Additional Public Prosecutor that in the subsequent proceedings recorded on 28.09.2016, the witness was tendered for cross-examination but no right to cross-examine was availed on the ground that the petition at hand had been moved in this Court. The Special Judge, thereafter, closed the opportunity and has listed the matter for cross-examination of the accused under Section 311 Cr.P.C. This is where the proceedings before the trial court rest.

In the considered view of this Court, it cannot be decided at this stage as to whether it was a case of typographical error or it was a case where deposition was correctly recorded. That would be an issue on which the Special Judge will have to take a call at the time of final adjudication on the basis of appreciation of evidence in its overall conspectus.

Be that as it may, since an issue had been raised it was incumbent on the part of the Special Judge to seek clarity. From that perspective, the recall of the witness for further examination in exercise of the jurisdiction under Section 311 Cr.P.C. cannot be faulted. The petition is dismissed.

However, in all fairness, it would be proper if the Special Judge affords one more opportunity to the petitioner to cross-examine PW-15

Constable Manoj Kumar. Thus, the Special Judge is directed to fix an appropriate date for such purposes directing the prosecution to tender the said witness for cross-examination.

R.K.GAUBA, J.

AUGUST 03, 2018

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