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

\+ CRL.M.C. 2686/2017

DILIP KUMAR ..... Petitioner

Through: Mr. Ankit Swarup and Mr. Suraj Rai Kesherwani, Advs.

versus

SUNITA MITTAL ..... Respondent

Through: Mr. Ravi Aggarwal and Mr. Vimal Anand, Advs.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

<u>O R D E R</u>

% **10.10.2018**

Vide order dated 28.08.2014 opportunity of petitioner to cross-examine the witness of complainant/respondent was closed. It is pointed out that only one witness was examined by the complainant, that is, CW1. The said witness was in the witness box and was being cross-examined by the petitioner's counsel. On 24.05.2014 further cross-examination of CW1 was deferred for want of Income Tax Returns (ITR) for the period 2005-06 to 2011-12. By this order respondent was also directed by the trial court to supply copy of ITRs for the aforesaid period to the counsel for the petitioner within one week. Aggrieved by the directions of supply of copy of ITRs, respondent preferred a revision petition before the Sessions Judge, which was allowed. Petitioner challenged the order of the Sessions Judge before this Court whereby order of the Sessions Judge was confirmed. Petitioner approached the Supreme Court by way of Criminal Appeal No. 1285/2017 which was disposed of vide order dated 24.07.2017, whereby it was observed that the order of trial court, directing the respondent to produce ITRs, was not justified, however, at the same time Supreme Court asked the respondent to supply copy of the ITRs for two years, that is, for the assessment year 2012-13 and 2013-14 to the petitioner.

In the meanwhile, when the matter was listed before the learned Metropolitan Magistrate, Delhi on 28.08.2014 opportunity of petitioner to cross-examine CW1 was closed. Learned Metropolitan Magistrate referred the order of the Sessions Judge whereby order dated 24.05.2014 regarding supply of ITRs was set aside. Subsequent event obviously could not have been taken note of as the order of closing the opportunity of petitioner to cross-examine was dated 28.08.2014; whereas Supreme Court order is dated 24.07.2017.

Petitioner filed an application under Section 311 Cr.P.C. for recalling CW1 which has been dismissed by the trial court vide order dated 24.05.2017.

That is how petitioner is before this Court by way of present petition under Section 482 Cr.P.C.

I am of the view that in view of the subsequent events more particularly the directions of the Supreme Court regarding supply of ITRs for two assessment years, CW1 is required to be recalled in the witness box for his cross-examination. Petitioner can also cross-examine CW1 regarding plea of repayment, as taken by him. It is clarified that only one opportunity will be granted to the petitioner subject to costs. Accordingly, impugned order is set aside and petitioner is afforded one opportunity to cross-examine CW1 confining to the issue of repayment and on the ITRs for the two assessment years only, subject to costs of ₹10,000/- to be deposited with the Kerala Chief Minister's Distress Relief Fund within one week. Receipt, evidencing deposit of costs, be produced before the trial court on the date fixed.

Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

Dasti.

A.K. PATHAK, J.

OCTOBER 10, 2018
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