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

DECIDED ON : 26th FEBRUARY, 2018

+ **CRL.REV.P. 154/2018**

R P BALI & ANR Petitioners

Through : Mr.B.P.Sharma, Advocate.

versus

STATE (GOVT OF NCT OF DELHI) Respondent

Through : Mr.Tarang Srivastava, APP.

SI Pankaj, PS Kirti Nagar.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

CRL.M.A.No. 3695/2018 (Exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CRL.M.A.No. 3696/2018 (Delay)

1. For the reasons mentioned in the application for condonation of delay in refiling the petition, the delay is condoned.
2. The application for condonation of delay is disposed of.

CRL.REV.P. 154/2018 & CRL.M.A.No.3694/2018

1. Present revision petition has been preferred by the petitioners to challenge the legality and correctness of an order dated

22.05.2017 of learned Addl. Sessions Judge by which application filed under Section 311 Cr.P.C. to recall certain witnesses was dismissed.

2. I have heard the learned counsel for the petitioners and have examined the file. Counsel urged that the recall of these witnesses PWs-1, 4, 7, 8 & 9 is essential as they could not be cross-examined at the relevant time due to non-availability of the previous counsel. He further urged that these witnesses are material to decide the dispute arising in the present FIR.

3. Perusal of the file reveals that the FIR was lodged in 2008 under Sections 325/307/342/34 IPC at PS Kirti Nagar. Various witnesses were examined by the prosecution during trial on different dates. PW-1 (Sharda Bali) was examined on 18.07.2011; her cross-examination continued on 12.03.2012, 21.04.2012 and could be concluded only on 07.09.2012. Apparently, she was cross-examined at length. PW-4 (Dr.Amit Aggarwal) was examined on 26.10.2012. On the request of the petitioners, the cross-examination was deferred due to non-availability of the counsel for 21.08.2012. On that day too, the counsel was not available and the cross-examination was recorded 'nil' despite opportunity given. PW-7 (Const. Manoj Kumar) and PW-8 (Dr.Lokesh) appeared before the Court for recording statements on 29.04.2014 and 21.08.2014 respectively. They were not cross-examined by the petitioners. PW-9 (Dr.S.P.Barua) recorded his statement on 29.09.2014 without any cross-examination by the petitioners. All these witnesses were examined in 2014. The petitioners did not file any application to recall all these witnesses on any specific ground earlier. No plausible explanation has been offered

by the accused persons as to why they took three years to recall these witnesses.

4. The impugned order declining to recall the witness was passed on 22.05.2017. Again, the petitioners have taken more than 9 months to challenge the said order. Impugned order records that the case was listed for recording statements of the accused persons / petitioners under Section 313 Cr.P.C. The intention to recall witnesses seems to delay the disposal of the case.

5. In 311 Cr.P.C. application moved before the Trial Court, it was informed that previously Mr.V.K.Ohri, Advocate was engaged to conduct the trial on behalf of the petitioners but due to his attitude of non-attending the hearing of the present case, another counsel was engaged. It was, however, not explained as to why the petitioners took so much time to change the counsel if there was any difficulty for him to appear before the Court.

6. The impugned order based upon fair appreciation of facts and law deserves no intervention.

7. The revision petition is dismissed in limine.

8. Pending application also stands disposed of.

(S.P.GARG)
JUDGE

FEBRUARY 26, 2018 / tr/bh