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

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Judgment delivered on: 01.10.2018

+ CRL.M.C. 4996/2018

SH. VIMAL KHANNA

..... Petitioner

versus

STATE (GOVT. OF NCT DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner :

Mr. Sanjay Khanna, Ms. Pragya Bhushan and Ms. Sonam Bhardwaj, Advs.

For the Respondents:

Mr. Panna Lal Sharma, Addl. PP for the State with W/SI Manoj Kumari

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

01.10.2018

SANJEEV SACHDEVA, J. (ORAL)

Crl. M.A. 33255/2018 (Exemption)

Allowed, subject to all just exceptions.

CRL.M.C. 4996/2018 & Crl. M.A. 33256/2018 (stay)

1. Issue Notice. Notice accepted by learned Addl PP for the State. With the consent of parties matter is taken up for final disposal today itself.

2. The petitioner impugns order dated 24.07.2017 whereby the application of the petitioner under Section 311 Cr. P.C. seeking an opportunity to cross-examine the prosecutrix was dismissed.

3. The petitioner also impugns the said order, in as much as, the petitioner was not afforded reasonable opportunity to cross-examine the Investigating Officer.

4. Learned counsel for the petitioner submits that on 22.02.2017, prosecutrix was examined as PW-1. However, counsel for the accused-petitioner was not present and did not appear until 1.15 PM. Noticing that the counsel was not present, the Court directed the accused to conduct the cross-examination.

5. Learned counsel for the petitioner submits that accused, not being a person trained in law did not have the ability to cross-examine the witnesses, did not cross-examine the prosecutrix. He further submits that the trial court erred in not appointing a legal aid counsel for the accused and thus failed to provide reasonable opportunity to cross-examine the witness. He further submits that on 24.07.2017, when the application of the petitioner under Section 311 Cr. P.C was heard and rejected by the Court, the Court further examined the Investigating Officer and the counsel of the petitioner realising that the application had been dismissed, walked out of the court, without conducting the cross-examination and this is so noticed by the Court in its order.

6. It may be seen that on 22.02.2017, trial court after recording the examination in chief of the prosecutrix, noticing that the counsel for the accused was not present, kept the matter for 01.00 pm. Thereafter at 01.15 has passed the following order:

“Till this time counsel for accused had not appeared. In these circumstances, opportunity is given to cross examine the witnesses. He has not availed the said opportunity. So, opportunity to cross-examine PW1 is hereby closed.”

7. On 22.07.2017, when the testimony of the prosecutrix PW1 was recorded, no lawyer was present for the accused. Trial court instead of appointing a lawyer for the accused asked him to cross examine the prosecutrix and on his failure, closed the right to cross examine. No lawyer was appointed by the trial court for the accused.

8. On 24.07.2017, the trial court dismissed the application of the petitioner under section 311 CrPC seeking recall of the prosecutrix. Thereafter, recorded the statement of the Investigating Officer. The trial court has noticed in the order, *“It may be noted that the Ld. Counsel refused to cross examine the witness and left the court in between.”*

9. When on 24.07.2017, the lawyer for the petitioner failed to cross examine the witness and left the court midway, the trial court once again failed to appoint a lawyer for the accused for the purposes of cross examination of the witness.

10. Denial of an opportunity to the accused to cross examine the witnesses violates the constitutional guarantee to an accused. Such denial also vitiates the trial. Where accused does not have assistance of a lawyer or his lawyer fails to defend the case in accordance with law, it is the duty of the court to provide a lawyer to the accused, unless the accused voluntarily makes an informed decision to defend himself personally without assistance of a lawyer. Failure to provide a lawyer to the accused would vitiate the trial.

11. Denial of appropriate opportunity to cross-examine the witnesses amounts to denial of principle of natural justice and does not afford the opportunity to the accused to defend the allegations against him. Asking the accused to cross examine the witness does not satisfy the mandate of law. The accused is not a person trained in law and is not shown to have voluntarily given up his right to a lawyer to defend him.

12. In the facts of the present case, it was incumbent upon the Trial Court to appoint a legal aid counsel for the purposes of defending the accused.

13. Keeping in view the fact that the petitioner was not afforded appropriate opportunity to cross-examine the witnesses, I am of the view that the impugned orders dated 22.02.2017 and 24.07.2017 cannot be sustained. According the impugned orders dated 22.02.2017 and 24.07.2017 are set aside.

14. Trial court is directed to afford an opportunity to the accused to cross-examine the said witnesses. Trial court is, accordingly, directed to re-summon the witnesses for the purposes of affording opportunity to the petitioner to cross-examine the said witnesses.

15. Petition is in the above terms.

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

OCTOBER 01, 2018
'rs'

SANJEEV SACHDEVA, J

