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

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Judgment delivered on: 05.01.2018

+ CRL.M.C. 4812/2017 & CrI. M.A. 19186/2017

RAJENDER SHARMA

..... Petitioner

versus

THE STATE GOVT OF NCT OF DELHI & ANR Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. O.P. Gulabami, Adv.

For the Respondents : Mr. Mukesh Kumar, Addl. PP for the
State with SI Inderpal
Mr. Pawan Sharma, Adv. for R-2

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

05.01.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner/accused is aggrieved by the order dated 25.08.2017 whereby the application of the petitioner under Section 311 of the Cr.P.C for recall of CW-1 i.e. Meena Tyagi (the complainant) and CW-2 Nutan Tyagi (husband of the complainant) for further cross examination has been rejected.

2. The contention of the petitioner is that CW-2 was not cited as a

witness, however, subsequently, his testimony was recorded. It is further contended that CW-2 in his testimony has made statements which are at variance to the statement made by CW-1 and as such there is necessary to recall CW-1 for cross-examination.

3. By the impugned order, the Trial Court had declined to accede to the prayer on the ground that the petitioner had sufficient time to cross examine the witnesses and to lead his evidence. It was noticed that the petitioner has filed the said application only when the final arguments were being heard. When the Respondent pointed out to the fallacy in the defence of the petitioner, the subject application was filed.

4. Perusal of the record shows that examination in chief of CW 1 was recorded on 04.10.2012 and CW-1 was partly cross examined on the said date. Thereafter further cross-examination was recorded on 21.05.2015 i.e. after a period of 2½ years. The testimony of CW-2 was recorded on 17.03.2016 and CW-2 was cross-examined on 01.07.2016 i.e. after nearly four months. The above dates reveal that sufficient time was available with the petitioner for the purposes of preparing for the cross-examination and for completely and effectively cross-examining the said two witnesses. The record of evidence shows that the said witnesses were cross-examined at length. The said application, inter-alia, seems to have been filed on account of change of counsel.

5. Mere change of counsel is no ground for allowing an application under Section 311 Cr.P.C. No doubt, this Court has sufficient discretionary power to recall a witness at any stage, however, the facts of the present case do not justify the exercise of the discretionary power. Record reveals that sufficient time was available to the petitioner to cross-examine the witnesses and in fact the petitioner has already availed of the opportunity to cross-examine the witnesses. Moreover, the subject application was also filed after one year of the recording of the cross examination of the CW2 and after liberty was granted to the petitioner to lead defence evidence.

6. In view of the above, I find no infirmity in the impugned order. The petition is accordingly dismissed.

SANJEEV SACHDEVA, J

JANUARY 05, 2018
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