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

% Judgment delivered on: 14.12.2018

+ CRL.REV.P. 1135/2018

VIKAS & ORS

..... Petitioners

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Ms. Anjum Kumar with Mr. Vivek
Malhotra, Advocates.

For the Respondents : Mr. Hiren Sharma, APP for the State.
ASI Devender Kumar, PS Uttam
Nagar.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

14.12.2018

SANJEEV SACHDEVA, J. (ORAL)

Crl.M.A.49692/2018 (exemption)

Exemption is allowed subject to all just exceptions.

CRL.REV.P. 1135/2018 & Crl.M.A.49691/2018 (stay)

1. Petitioners impugn order dated 03.12.2018, whereby, the application of the petitioner under Section 311 Cr.P.C., seeking

permission to cross-examine PW12 – Smt. Sumitra, PW – 13 Sh. Vijay Kumar and PW – 14 Sh. Nanak Chand, was rejected.

2. Issue Notice. Notice accepted by learned APP for the state. With the consent of parties matter is taken up for final disposal.

3. Learned counsel for the petitioners submits that, on 20.10.2018, when witnesses PW12 – Smt. Sumitra, PW – 13 Sh. Vijay Kumar and PW – 14 Sh. Nanak Chand were produced for examination and cross-examination, the counsel was engaged in another Court conducting trial and he made a request to the Trial Court to keep the matter post-lunch for the purposes of cross-examination. However, the Trial Court, while recording the examination-in-chief and cross-examination of the other witnesses, which was recorded prior to lunch, noticed the absence of the counsel and closed the right of cross-examination of the said witnesses.

4. Learned counsel for the petitioners points out that the petitioners have exercised their right of cross-examination of all the other witnesses and detailed cross-examination has been conducted.

5. Record of proceedings of 20.10.2018 shows that the counsel for the petitioner was not present and the Court had recorded the evidence of the witnesses in the pre-lunch session and thereafter noticing that the counsel was not available, has observed that it was made clear that Prosecution Witnesses would be examined in terms of the directions

of the High Court as the subject case was one of the oldest cases pending before the Court.

6. This Court, by judgment dated 11.10.2018 in CrI.Rev. P.4811/2018 titled *Mohd. Gulzar vs. The State (Govt. of NCT of Delhi)* as also the judgment dated 01.10.2018 in CrI.M.C.4996/2018 titled *Vimal Khanna vs. State (Govt. of NCT of Delhi)* has held that the right of cross-examine is a constitutional right guaranteed to the accused and any denial of an opportunity to the accused to cross examine the witnesses violates the constitutional guarantee. Such denial also vitiates the trial. Where accused does not have assistance of a lawyer or his lawyer fails to appear to defend the case, 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, who is not in a position to defend himself, vitiates the trial and violates the constitutional guarantee.

7. Perusal of order dated 20.10.2018 does not show that an opportunity was granted to the accused to make an alternate arrangement or that the accused made an informed decision to defend himself personally. Since the order of the Trial Court suffers from said infirmity and does not grant any opportunity to the accused to defend himself and cross-examine the said witnesses, the order cannot be sustained.

8. Accordingly, impugned order dated 03.12.2018 as also order dated 20.10.2018 are set aside. The Trial Court is directed to re-summon the witnesses PW12 – Smt. Sumitra, PW – 13 Sh. Vijay Kumar and PW – 14 Sh. Nanak Chand and grant one more opportunity to the petitioner cross-examine said witnesses.

9. Learned counsel for the petitioners submits that he shall endeavour to cross-examine all the three witnesses in one date provided sufficient time is available.

10. Since the matter is listed today before the Trial Court, learned counsel for the petitioners is permitted to orally inform the Trial Court about this order and request the Trial Court to fix a short date for the purposes of cross-examination of the said witnesses.

11. The petition is disposed of in the above terms.

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

DECEMBER 14, 2018
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SANJEEV SACHDEVA, J