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

Date of decision: November 07, 2019

+ W.P.(CRL) 3124/2019 and CRL.M.A. 39841/2019 (exemption)

DEEPAK KUMAR CHAUDHARY Petitioner

Through: Mr. Akshay Bhadnari and Mr.
Digvijay Singh, Advocates

Versus

STATE Respondent

Through: Mr. Sanjay Lao, ASC with Mr.
Karan Jeet Rai Sharma, Advocate
with SI Vijay Kumar, P.S.: Sadar
Bazar

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

JUDGMENT

BRIJESH SETHI, J (oral)

1. This is a petition under Article 226 of the Constitution of India r/w Section 482 Cr.P.C., vide which the petitioner has prayed that he be allowed to confront PW-5 Constable Ajit Singh with his statement recorded under section 161 Cr.P.C. with reference to the answer given by the witness in his cross-examination i.e. “diary entry was recorded of my departure from police station on that day. I had instructed the DD Writer to record the entry of my departure. I do not know if the IO has seized the said diary entry”.

2. Learned counsel for the petitioner/ accused states that in the trial court he had sought permission to confront the witness/PW-5 Constable Ajit Singh with the abovementioned portion of the cross-examination. Learned trial court has, however, denied the said request and observed as under:-

“At this stage, Ld. Defence Counsel seeks to confront the witness of the portion recorded in the cross-examination pertaining to diary entry with his statement u/s 161 Cr.P.C. This is a fact that has come across in answer to a question put in the cross-examination and is not a fact deposed to by the witness in his examination-in-chief and therefore, cannot be confronted as an improvement.”

3. Learned ASC has opposed the petition and submitted that there is no infirmity in the order passed by learned ASJ.

4. Learned counsel for the petitioner has however argued the law is well settled under section 145 of the Indian Evidence Act that if a witness is to be contradicted with his previous statement, the attention of the said witness must be drawn to those parts of the writing intended to contradict him. The law is further well settled that even a omission to mention a fact in the previous statement is a contradiction and needs to be confronted to the witness. As per section 162 Code of Criminal Procedure a previous statement recorded under section 161 Code of Criminal Procedure has to be confronted to the witness in accordance with section 145 of the Indian Evidence Act. The finding of the learned Trial Court disallowing the petitioner from confronting the witness is

therefore erroneous and will cause prejudice to the accused if he is not allowed to confront the said witness with his previous statement.

5. I have considered the rival submissions. As per section 145 of the Indian Evidence Act, a witness can be contradicted with his previous statement. It is also a settled law that omission to mention the fact in the previous statement is contradiction and witness needs to be confronted with the said facts. Section 162 of the Code of Criminal Procedure contemplates that previous statement recorded 161 Code of Criminal Procedure has to be confronted to the witness in accordance with Section 145 of the Indian Evidence Act. In these circumstances, if the petitioner is not allowed to confront the witness with his previous statement, prejudice will be caused to him and he will not be able to take advantage of the said contradiction. In these circumstances, in the interest of justice, the petition is allowed and trial court is directed to allow the petitioner to confront the witness i.e. Constable Ajit Singh, P.S.: Sadar Bazar with reference to the answer given by the witness in his cross-examination, with his previous statement recorded under Section 161 of Code of Criminal Procedure.

7. In the above terms, the present petition alongwith pending application is disposed of.

(BRIJESH SETHI)
JUDGE

NOVEMBER 07, 2019
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