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

+ W.P.(CRL) 247/2024, CRL.M.A. 2269/2024 and

CRL.M.A. 2270/2024

SURENDER VASUDEV

..... Petitioner

Through: Mr. Siddharth Bhatli, Advocate

versus

STATE NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Anand Khatri, ASC

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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23.01.2024

1. By way of present petition filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C., the petitioner seeks to assail the order dated 09.11.2023 passed by the trial court in Complaint Case No.1705/2017 whereby the petitioner's request to re-examine the complainant came to be dismissed. A copy of the impugned order has been placed on record.

2. The complaint case pertains to the year 2017. The only ground to file the application before the trial court was that the accused had engaged a new counsel and that the earlier counsel had failed to put the relevant questions qua the FIR which came to be registered later i.e., on 08.02.2023 under Sections 406/420/34 IPC. The trial court, while considering the aforesaid application, noted that the complainant was initially cross-examined on 02.08.2018 on behalf of all the accused persons and was further cross-examined on 07.09.2019. The cross-examination was conducted not only on the aspect of the subject cheque but also on the aspect of the allotment letter.

3. A perusal of the impugned order further reveals that the Court was



constrained to note that the petitioner did not even disclose what were the new facts which required filing of the application after three years. The Court was further constrained to note that despite the fact that a query was put on these aspects, the same were not disclosed even before the court at the time of the arguments. Even the FIR on which the cross-examination was sought, was not enclosed with the application. The application was dismissed while imposing cost of Rs.10,000/- on each of the applicants.

4. In the present proceedings, learned counsel has again contended that the earlier counsel had not cross-examined the complainant. On being questioned as to what is the material aspect, the counsel had replied that in the FIR the complainant has described the allotment as compensatory allotment, which word was not used in the complaint. The trial court in the impugned order has noted that the earlier cross-examination conducted in the years 2018-19 was on the subject cheque as well as on the nature of allotment.

5. Considering the scope and parameters of Section 311 Cr.P.C. which is outlined by the Supreme Court in State (NCT of Delhi) v. Shiv Kumar Yadav and Anr. reported as **(2016) 2 SCC 402**, wherein change of a counsel was held not to be a ground to re-examine the witnesses. The case is stated to be at the stage of statement of accused.

6. Accordingly, I find no ground to entertain the present petition. The same is dismissed alongwith the pending applications.

MANOJ KUMAR OHRI, J

JANUARY 23, 2024

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