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

+ CRL.M.C. 511/2021, CRL.M.A. 2603/2021

MS. HARMANDEEP KAUR

..... Petitioner

Through: Mr.Deepak Kumar Sharma and
Mr.Ashish Sharma, Advocates.

versus

STATE & ANR.

..... Respondents

Through: Mr.Ajay Vikram Singh, APP for State
with SI Satvinder, P.S. Chanakya
Puri.
Mr.Jugal Wadhwa, Mr.Rishab Bhalla,
Mr.Niraj Kumar Mishra,
Mr.Siddharth Sharma and Mr.Raghav
Goyal, Advocates

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

01.05.2024

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1. Petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner challenging order dated 22.09.2020 passed in Criminal Revision Petition No.576/2019 by learned ASJ, whereby order dated 05.08.2015 and order on charge dated 21.11.2015 passed by learned MM, was set aside.
2. Learned counsel for respondent No.2/(Dr.Amitabh Maini-accused before learned Trial Court) submits that vide order dated 21.11.2015 passed by learned MM, charge against respondent No.2 in a complaint case was framed without granting an opportunity to cross-examine the witnesses at the stage of pre-charge evidence. The revision petition preferred on behalf of respondent No.2 was accordingly allowed vide order dated 22.09.2020



passed by learned Additional Sessions Judge as observed in paragraphs 29 and 30 as under:-

“29. Thus, it is very clear that ld. trial court, after the summoning of accused, did not record any evidence u/s 244 Cr.P.C. Thus, there was no material before the ld. trial court which it could have considered in order to frame charges against the accused u/s 246 Cr.P.C and thus, the failure of the ld. trial court to follow the prescribed procedure u/s 244 Cr.P.C is sufficient for setting aside the impugned orders dated 05.08.2015 and the charge as framed on 21.11.2015. They are accordingly set aside.

30. However, as the matter has been pending for more than 12 years and starting the matter afresh would cause further delay. The purpose of Section 244 Cr.P.C is that evidence under that provision has to be recorded in the presence of accused and he has to be afforded an opportunity to cross examine complainant's witnesses. As the charges against the accused have been set aside and the manner in which the proceedings have been conducted has been found to be illegal, it can be safely considered that after summoning of accused, testimony of CW1 as recorded on 03.08.2019 was recorded in his presence. Therefore, the said testimony can be considered as the evidence brought by the complainant u/s 244 Cr.P.C. It is therefore directed that instead of calling CW1 again for her examination in chief, the trial court shall consider the testimony of CW1 as recorded on 03.08.2019 as her examination in chief u/s 244 Cr.P.C and afford accused/ revisionist an opportunity to cross examine CW1. Thereafter, if the complainant wishes to bring any other pre charge evidence, the trial court shall afford such an opportunity to the complainant and after the completion of precharge evidence, the trial court shall proceed to decide the question of framing of charge. The revision petition is accordingly disposed of. Copy of this order alongwith trial court record be sent back. File be consigned to record room.”

3. After partly making some submissions, learned counsel for the



petitioner does not press the present petition, in view of settled legal position in this regard.

4. Taking the statement of learned counsel for the petitioner on record, petition is accordingly disposed of without expressing any opinion on merits of the case or stand taken on behalf of respondent No.2 in CrI.M.C. No.2238/2023 which is pending consideration. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to learned Trial Court for information.

ANOOP KUMAR MENDIRATTA, J

MAY 1, 2024/v