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

+ **CRL.M.C. 2708/2022 & CRL.M.A. 11173/2022**

SH NITIN JAIN & ORS.

.....Petitioners

Through: Mr. Anjaneya Mishra, Mr. Sahil
Yadav and Mr. Nidish Gupta,
Advocates.

versus

STATE OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Shoaib Haider, APP for the State.
Mr. Akash Vajpai and Ms. Shweta
Shandilya, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

22.08.2024

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1. Petitioner has approached this Court challenging the Order dated 09.05.2022, passed by the learned Metropolitan Magistrate, Mahila Court, Patiala House Courts, in CC No.1648/2017, dismissing the application filed by the Petitioner herein under Section 311 Cr.P.C for recalling the Authorized Representative (AR) of the complainant for cross-examination.

2. It is pertinent to mention that the present proceedings arises out of proceedings under Section 138 of the NI Act. A perusal of the impugned Order shows that the Petitioner wanted to cross-examine the AR of the Complainant. It is stated by the learned Counsel for the Petitioner that the Petitioner has failed to cross-examine the AR of the Complainant on two dates and on the third date the right of the Petitioner to cross-examine the AR of the Complainant has been closed by the learned Metropolitan



Magistrate.

3. At this stage it is pertinent to reproduce Section 311 Cr.P.C. and the same reads as under:

“311. Power to summon material witness, or examine person present.

- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

4. A perusal of Section 311 shows that when evidence of a person appears to be essential to the just decision of the case then the Court can recall and re-examine a person already examined. The AR has not been examined and this Court is of the opinion that the examination of AR will be necessary for a just decision of the case.

5. In view of the fact that the matter is pending for the last two years and the trial is not proceeding ahead, this Court is inclined to permit the Petitioner to cross-examine the AR of the Complainant on the next date of hearing before the Trial Court, i.e. 02.09.2024, subject to the Petitioner depositing costs of Rs.10,000/- with the Armed Forces Battle Casualties Welfare Fund before 02.09.2024. This cost is being imposed because of the conduct of the accused in not examining the AR of the complainant for more than one occasion.

6. It is made clear that the Petitioner shall not take any adjournment on 02.09.2024 and the AR of the Complainant is directed to be present in Court and submit himself for cross-examine on 02.09.2024.



7. With these directions, the Petition is disposed of, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

AUGUST 22, 2024

Rahul