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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 6372/2024, CRL.M.A. 24370/2024**
AMIT KUMARPetitioner

Through: Mr. Kartik Gupta, Advocate.

versus

THE STATE OF NCT OF DELHIRespondent

Through: Ms. Meenakshi Dahiya, APP with
SI Om Yadav, PS: Palam Village.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% **20.09.2024**

CRL.M.A. 24371/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.M.C. 6372/2024, CRL.M.A. 24370/2024

1. An application under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner for setting aside order dated 19.12.2023 passed by learned Trial Court, whereby, application preferred on behalf of petitioner under Section 311 Cr.P.C. for recalling PW-3/prosecutrix was dismissed.
2. Learned APP for the State appears on advance notice.
3. Learned counsel for the petitioner submits that relevant material by way of photographs and chats between the prosecutrix and petitioner along with additional material, which was required to be confronted to PW-3 could not be produced before the learned Trial Court during cross-examination.



He further submits that defence of petitioner/accused shall suffer in case opportunity is not granted to recall the prosecutrix for further cross-examination. Further, the petitioner should not be permitted to suffer on account of lapse of counsel to explain the relevant circumstances in application under Section 311 Cr.P.C.

4. Learned APP for the State submits that there does not appear to be any error in the impugned order passed by learned Trial Court, since learned counsel for petitioner failed to explain any change of circumstances for recalling PW-3/prosecutrix for cross-examination.

5. It is well settled that exercise of power under Section 311 Cr.P.C. should be resorted with the object of finding out the truth which would lead to just and correct decision of the criminal trial. The power should be exercised to prevent serious prejudice to the accused or miscarriage of justice.

6. Apparently, learned counsel for the petitioner failed to refer to the relevant material or circumstances for recalling PW-3 before the learned Trial Court.

Considering the background facts of the case and submissions made by learned counsel for the petitioner, this Court is of the considered opinion that an opportunity needs to be granted to the petitioner/accused for filing an application afresh explaining the relevant material, photographs, chats which are required to be put up to PW-3/prosecutrix during cross-examination, since the accused cannot be permitted to suffer on account of lapse of the counsel.

Petitioner is accordingly permitted to file an application under Section 311 Cr.P.C. afresh before the learned Trial Court, which shall be considered by the learned Trial Court without being influenced by its earlier order.

Petition is accordingly disposed of. 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.

SEPTEMBER 20, 2024/R/sd