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

Date of decision: 29.11.2019

+ CRL.M.C. 5810/2019 & CRL.M.A. 40372/2019

SURESH YADAV & ANR Petitioners

Through Mr. Ravin Rao, Adv.

versus

THE STATE Respondent

Through Mr. Hirein Sharma, APP for State
Insp. Ravinder singh, PS Paschim Vihar

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. By way of the present petition, petitioner seeking setting aside of order dated 24.10.2019 whereby the learned Trial Court dismissed the application u/s 311 Cr.P.C. seeking recalling of witnesses PW-6 namely ASI Jagdish for his cross-examination.

2. The petitioners are facing trial in case FIR No.522/2004 registered at P.S. Paschim Vihar for the offences punishable under Sections 420/467/468/471/120-B IPC.

3. Learned counsel for the petitioners submits that PW-6, ASI Jagdish, is a vital witness, being the alleged decoy customer, who was examined-in-chief before the Ld. Trial Court but could not be cross examined as the advocates were abstaining from work on that date. The said witness was important and hence, the petitioners moved an application U/s 311 Cr.P.C. before the Ld. Trial Court seeking recall of the said witness for his cross-examination and the said application was allowed by the Ld. Trial Court vide order dated 06/04/2013. The said witness was thereafter not put to cross-examination for one reason or the other and the summoning of the said witness was mechanically overlooked and the other witnesses in the case were examined and then cross examined by the counsel for the petitioners. When the prosecution exhausted the entire list of witnesses, it was pointed out by the counsel for the petitioners that PW-6 remains to be cross examined. Accordingly the said witness was summoned and he finally put in his appearance in the witness box on 27/07/2019 but on the said date the said witness could not be cross examined on behalf of the petitioners as the main counsel was not available and the Ld. Trial Court was pleased to close the Defence Evidence. On 31/07/2019, the petitioners moved an application

seeking recalling of the said witness for cross examination before the Ld. Trial Court which was dismissed by the Ld. Trial Court vide order dated 24.10.2019, the order impugned in the present petition.

4. Learned APP for the State submits that before passing of the impugned order, the learned Trial Court had declined the request of the petitioner vide its detailed order dated 27.07.2019, and the learned Trial Court has observed in its order dated 24.10.2019, that accused persons could not avail repeated opportunities granted to them for the purpose of cross examination of the said witness, who comes from Mahendergarh, Haryana.

5. It is not disputed that the petitioners were allowed to cross examine PW-6, however due to one reason or the other, he could not be cross examined. No doubt, it is duty of an accused to examine a witness who is present for the said purpose, however, in the larger interest of justice, I hereby grant one last and final opportunity to the petitioners to cross examine PW-6, subject to cost of Rs.10,000/-. Out of the said amount, Rs.5,000/- be deposited in favour of Library, Bar Association, Tis Hazari Courts, Delhi and the remaining Rs.5,000/- shall be paid to PW-6 after conclusion of his cross examination.

6. It is also made clear that only one opportunity shall be granted to the

petitioners to conclude cross examination of PW-6 on the date so fixed by the Trial Court and no further opportunity, on any ground whatsoever shall be granted for the said purpose. Meaning thereby, if on any ground the petitioners fail to cross examine PW-6 on the date fixed by the Court below, no further opportunity shall thereafter be granted to them for the said purpose.

7. With these observations, the instant petition stands allowed and is disposed of accordingly along with the pending application.

Order *dasti* under signatures of the Court Master.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 29, 2019
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