

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Order: February 04, 2019

+ **CRL.M.C. 619/2019**

ASHOK & ANR.

.....Petitioners

Through: Mr. Dinesh Sah and Mr. Rajeev
Rajan, Advocates

Versus

STATE

..... Respondent

Through: Mr. Izhar Ahmad,
Additional Public Prosecutor for
State with SI Madan Lal

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

Crl.M.A. 2548/2019 (Exemptions)

Allowed, subject to all just exceptions.

Crl.M.A. 2549/2019 (delay)

There is delay of 13 days in re-filing the accompanying petition.

For the reasons stated in the application, it is allowed and the delay is condoned.

The application is disposed of.

CRL.M.C. 619/2019 and Crl.M.A. 2547/2019 (Stay)

Petitioner's application seeking recall of PW-1, PW-2 & PW-3 stands dismissed vide trial court's order of 25th August, 2018.

Counsel for petitioners submits that PW-1, PW-2 & PW-3 are

material witnesses, who could not be cross examined as previous counsel of the accused persons/petitioners was negligent. Petitioners' counsel submits that the previous counsel was unwell and so petitioners could not be defended and the matter is now coming before the trial court on 7th February, 2019 for final arguments.

Petitioners' counsel submits that for the negligence of petitioners they can be put to terms, but the cross examination of PW-1, PW-2 & PW-3 is essential.

Learned Additional Public Prosecutor supports the impugned order and seeks dismissal of this petition.

Upon hearing and on perusal of impugned order of 25th August, 2018, I find that petitioners have not exercised due diligence in defending themselves before the trial court and the blame is sought to be put on the previous counsel, whose name is not disclosed. In any case, in the interest of justice, this Court deems it appropriate that petitioners be put to terms as the cross examination of PW-1, PW-2 & PW-3 is necessary for the just decision of this case.

Accordingly, impugned order of 25th August, 2018 is set aside and petitioners' application under Section 311 of Cr.P.C. is allowed, subject to costs of ₹30,000/- to be deposited with '*Prime Minister Relief Fund*' within a week.

Upon placing on record the proof of deposit of costs before the trial court, PW-1, PW-2 & PW-3 be summoned for cross examination by petitioners' counsel before the trial court and for this purpose one effective opportunity be granted to the petitioners.

Consequentially, this petition is accordingly disposed of.

Dasti.

**(SUNIL GAUR)
JUDGE**

FEBRUARY 04, 2019

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HIGH COURT OF DELHI



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