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% 17.03.2011

Present: Mr. T.N. Saxena and Mr. M.C. Sharma, Advs. for the petitioner.
Mr. Sanjeev Rajpal, Adv. for the respondent.

+ Crl. M.C. No. 781/2011

+ Crl. M.C. no. 782/2011

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Petitioner filed an application under Section 311 Cr.P.C. before the Additional Chief Metropolitan Magistrate (ACMM), Delhi for recalling of PW1 for his cross examination by the petitioner/accused. This application was dismissed vide order dated 28th May, 2010. Petitioner filed a revision petition against this order before the Sessions Judge which has been dismissed vide order dated 22nd January, 2011. That is how petitioner is before this Court. Trial Court file perused. It appears that respondent had examined Jagtar Singh, Assistant Commissioner of Income Tax as PW1 at pre-charge stage. PW1 was even cross-examined by the petitioner's counsel. Charge was framed on 13th May, 2005. Thereafter, PW1 was recalled in the witness box on 21st October, 2005. He was tendered for cross-examination by the petitioner but since counsel for the petitioner was not present, he was not cross-examined. Opportunity of the petitioner to cross-examine this witness was closed on 21st October, 2005. Thereafter, matter proceeded further and reached at the stage of final arguments. At that stage an application under Section 311 Cr.P.C. was filed which has been rejected by the trial court.

At this stage, learned counsel for the petitioner contends that he would be satisfied in case the cross-examination of PW1 recorded at pre-charge stage is read in evidence during the trial more so, when this witness



had not stepped in the witness box again to depose anything further t
what he had stated earlier at pre-charge stage. He was simply tendered for
his cross-examination post framing of charge. Accordingly, it is ordered
that cross-examination of PW1, recorded at pre-charge stage, shall be read
in evidence post framing of charge stage, more so, when this witness had
not stepped in the witness box to depose anything further after framing of
charge. Petition is disposed of in the above terms.

Copy of this order be given to counsel for petitioner under the
signature^s of Court Master.

Crl. M.A. No. 2967/2011

Crl. M.A. No. 2968/2011

Disposed of as infructuous.

A handwritten signature in black ink, appearing to read 'A.K. Pathak'.

A.K. PATHAK, J.

March 17, 2011

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