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HIGH COURT OF DELHI : NEW DELHI

Date of hearing and Order: 12th September 2008

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Crl. M.C. No. 3022/2008

% Shri Vikrant Sharma ... Petitioner
Through: Mr. Puneet Kumar, Advocate

versus

State & Anr. ... Respondents
Through: Mr. Amit Sharma, Additional Public
Prosecutor for the State.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J. (Oral)

Crl. M.A. No. 11117/2008

Exemption application allowed subject to all just exceptions.

Application stands disposed of.

Crl. M.C. No. 3022/2008

This petition under section 482 of the Code of Criminal Procedure is directed against the impugned order dated 11th December, 2007 vide which petitioner's revision petition against closure of his evidence by the trial court in proceedings under Section 138 of the Negotiable Instrument Act has been dismissed.

Crl. M. C. No. 3022/2008

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Learned counsel for the petitioner states that only one opportunity was granted to him for leading evidence and he could not do so because his father was hospitalized from 28th October 2007 to 30th October, 2007. Learned counsel further states that now his case is fixed before the trial court on 15th September, 2008 for final arguments.

A perusal of the impugned order reveals that 22nd October, 2007 was the date fixed for petitioner's evidence and on that day, petitioner filed an application for exemption which was granted and the case was adjourned to 14th November, 2007, It is recorded in the impugned order that no plausible reason was tendered for not summoning any defence witness on the said date and the defence evidence of the petitioner was closed. Learned counsel for the petitioner has drawn the attention of this court to the grounds of revision wherein in para 'C' it has been specifically asserted that after the petitioner's father was discharged from the hospital, his condition did not improve and the petitioner being the only son had to remain at home to take care of his father who could not take meals by himself. Another reason given is that the daughter of the petitioner was also ill during that period.

The operative part of the impugned order reads as under :-

"7. The perusal of the trial court record has transpired that the revisionist/accused did not file any list of the witness before the

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learned trial court nor did he take any steps for calling any defence witness. The father of the accused was hospitalized from 28.10.2007 to 30.10.2007. However, thereafter the accused/revisionist could have taken some steps to call the defence witnesses. But the accused failed to take any such steps. Even otherwise, the defence which now accused wants to take and prove through his defence witnesses may not be of much help to the accused."

The revisional court has not dealt with the aspect of petitioner being busy in looking after his ailing father after 30th October, 2007. In any case, substantial justice is required to be done and in all fairness, a reasonable opportunity has to be afforded to the petitioner to lead his evidence, in the facts and circumstances as indicated above.

Although learned counsel for the petitioner had initially argued before this court that he wants to get a FSL Expert examined to prove handwriting in cheque in question but later on, he has given up this argument and states that only one effective opportunity be granted to the petitioner to lead his entire evidence and he would get examined a witness from bank and one Manager of the complainant to prove some documents which favour the petitioner.

In the peculiar facts and circumstances of this case, present petition is allowed to secure that ends of justice and the impugned order is set aside and the trial court is directed to

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afford one effective opportunity to the petitioner to lead his evidence. It is made clear if on the date so fixed by the trial court, petitioner fails to lead any evidence, then the trial court is at liberty to proceed in accordance with law.

The main petition as well as Crl. M.A. No.11118/2008 stand disposed of.

Dasti under signature of the Court Master.


Sunil Gaur, J.

September 12, 2008
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