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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: February 03, 2015

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CRL.M.C. 202/2015 and Crl. MA No. 834/2015

MOHAN KISHORE SAXENA Petitioner

Through: Mr. Fanish K. Jain, Advocate

versus

STATE & ANR Respondents

Through: Ms. Nishi Jain, Additional Public
Prosecutor for State

Mr. Deepak Kumar, Advocate for
respondent no. 2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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(ORAL)

Impugned order of 19th April, 2014 declines petitioner's prayer for summoning Smt. Prakasho as a defence witness.

Learned counsel for the petitioner submits that deposition of Smt. Prakasho is essential for a just decision of this case because she had purchased the property i.e. H.No.69, Gokal Puri, Shahdara, Delhi in July, 2006 vide Agreement to Sell, Registered GPA, Receipt, Will and Affidavits, etc. and the inspection of the premises in question was conducted by respondent no. 2 in December, 2006. So, it is contended that rejection of petitioner's prayer for deposition of Smt. Prakasho as a defence witness by the

trial Court vide impugned order dated 19th April, 2014 is unjustified.

Learned counsel for respondent no. 2 draws attention of this Court to the order of 30th August, 2013 passed by this Court in petitioner's earlier petition being Crl. M.C. No. 3496/2013 wherein the stand taken by the petitioner was that Smt. Prakasho would not come forward to depose in favour of the petitioner due to the fear that the liability in question would be transferred to her.

At this stage, learned counsel for petitioner submits that petitioner still maintains the stand taken before this Court on 30th August, 2013, as petitioner will not be able to secure the presence of Smt. Prakasho and only through Court process. It is asserted that presence of Smt. Prakasho can be procured only through the State machinery.

Upon hearing and perusal of the impugned order, I find that the petitioner's prayer for examination of Smt. Prakasho as defence witness has been declined by the trial Court by observing that her name did not figure in petitioner's earlier application filed by the petitioner and by filing numerous applications, the petitioner is delaying the proceedings.

Learned counsel for the petitioner draws the attention of this Court to order sheets of trial Court annexed with this petition as Annexure P-10 to P-15 to refute that petitioner had delayed the proceedings.

After hearing learned counsel for the parties and upon perusal of the above mentioned Annexures as well as material on

record, I find that the examination of Smt. Prakasho as defence witness is essential for proper adjudication of this case and there is no deliberate delay on the part of petitioner and so, the impugned order is rendered unsustainable and is accordingly set aside.

The petitioner is permitted to get Smt. Prakasho examined in his defence. The parties shall appear before the trial Court on 6th February, 2015.

Upon petitioner filing process fee on 6th February, 2015, let Smt. Prakasho be summoned as a defence witness through the concerned S.H.O., returnable for a date fixed by the trial Court. The FIR case is pending since the year 2007. Therefore, the trial Court shall make all endeavours to expedite the trial of this case.

With the aforesaid directions, the petition and the application are disposed of.

Copy of this order be given dasti under signature of the Court Master to both the parties.

(SUNIL GAUR)
JUDGE

FEBRUARY 03, 2015

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