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

Date of Decision: August 05, 2015

+ CRL.M.C. 2072/2014
RASHID M H JUNG

..... Petitioner

Through: Mr. N.Hariharan, Sr. Advocate
with Mr. Vinay Kumar, Mr.
Utkarsh & Mr. Siddharth S.Yadav,
Advocates

versus

STATE

..... Respondent

Through: Mr. Rajiv Mohan, Special Public
Prosecutor for State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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This is the second round of litigation. In the first round of litigation, petitioner had sought quashing of FIR No.12/2013 registered at P.S. Lahori Gate, Delhi for the offence of cheating, etc. on merits and the said petition was disposed of by this Court vide order of 22nd November, 2013 (*Annexure-A*) whereby relegating petitioner to avail of the alternate remedy of urging the pleas taken in the said petition before the trial court at the stage of hearing on the point of charge and till the order on charge is passed, it was directed that the personal appearance of petitioner be not insisted upon provided petitioner is duly represented by counsel, who does not seek adjournment.

Vide impugned order of 26th April, 2014 petitioner's prayer for summoning *Krishan Gupta* as an accused stands declined while noting that FSL report qua the said accused is still awaited. Impugned order also directs petitioner to appear in person for hearing on the point of charge.

During the course of hearing, it was pointed out by learned senior counsel for petitioner that the FSL report was already there when the impugned order was passed. In this regard, attention of this Court is drawn to copy of the charge-sheet to show that receiving of FSL report finds mention in it. This is not disputed by learned counsel for respondent and is otherwise evident from the copy of the charge-sheet (*Annexure-B*).

It is also not in dispute that in the subsequent supplementary charge-sheet, *Krishan Gupta* is arrayed as an accused. It was pointed out by learned counsel for respondent that neither petitioner nor trial court was aware that personal appearance of petitioner is exempted by this Court vide order of 22nd November, 2013. To substantiate this, it was pointed out by learned counsel for respondent that on the day of passing of the impugned order, petitioner had filed an application for exemption from personal appearance while disclosing inability to secure the railway tickets from Bombay to Delhi.

Be that as it may. In the face of this Court's order of 22nd November, 2013 (*Annexure-A*), petitioner need not appear in person provided his lawyer appears and does not seek adjournment. In case trial court chooses to pass an order on charge against petitioner, then it would be open for trial court to secure the personal appearance of petitioner.

In view of the aforesaid, impugned order of 26th April, 2014 is hereby quashed while not commenting upon merits. It is expected that

trial court shall hear petitioner as well as co-accused-*Krishan Gupta* on the point of charge and thereafter, expeditiously decide whether they are required to be put on trial or not.

With aforesaid directions, this petition stands disposed of.

Trial Court be apprised of this order forthwith.

(SUNIL GAUR)
JUDGE

AUGUST 05, 2015

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