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

Judgment delivered on: 11th September, 2015

+ **CRL.M.C. No.1912/2015**

AJIT SINGH

..... Petitioner

Represented by: Mr. Ashish Dingra, Advocate.

Versus

DHIRAJ KUMAR VISHWAKARMA

.....Respondent

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A.No.6857/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. No.1912/2015

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioners seek setting aside of the order dated 05.01.2015 passed in Criminal Revision No. 25/1/2014.

2. The case of the petitioner is that a complaint against the petitioner was filed under Section 138 of the Negotiable Instruments Act, 1881. Accordingly, the petitioner was summoned, who entered his appearance. Thereafter, the complainant filed his affidavit of evidence, he could not be cross-examined due to various reasons. On 17.07.2013, counsel for the petitioner was held up in Rohini Courts and on this account, an

adjournment was sought but the Trial Court denied the same and closed the opportunity to cross-examine the complainant vide order dated 17.07.2013.

3. Being aggrieved, the petitioner filed the revision petition before the learned Revisional Court, however, the fact remains that vide order dated 17.07.2013, while closing the cross-examination of the complainant, the learned Trial Court observed that the petitioner/accused was not willing and interested to cross-examine the complainant.

4. It is noted that notice under Section 251 Cr.P.C. was served upon the petitioner on 11.07.2009 and the case was posted for cross-examination of the complainant on 16.12.2009. Since then, the matter kept on adjourned for the same purpose and on some dates the petitioner was absent. No application for disclosing the defence under Section 145 (2) was moved despite that, case remained pending for cross-examination of the complainant.

5. It is pertinent to mention that on 11.12.2013, petitioner moved an application for leading defence evidence and filed the revision on 30.11.2013 after expiry of period of limitation. Application under Section 5 of the Limitation Act was moved alleging that the petitioner's brothers' daughter was under treatment in AIIMS. However, nowhere it was mentioned that the petitioner is the only male member, who is taking care of his niece. It was also not mentioned that for how many days, his niece remained hospitalized. The petitioner moved an application for leading defence evidence on 11.12.2013 and engaged Mr. Bimlesh Kumar, Advocate, on 26.09.2013, which shows that the petitioner was in constant

touch with his Advocate and was coming to him for signing applications and *Vakalatnama*. Thus, the petitioner was taking the proceeding very casually.

6. In view of the above noted facts, I am of the considered opinion that there is no illegality or perversity in the order dated 05.01.2015 passed by the Revisional Court.

7. Therefore, finding on merit in the instant petition, the same is dismissed accordingly.

Crl. M.A.No.6856/2015 (for stay)

With the dismissal of the petition itself, the instant application has become *infructuous*. The same is accordingly dismissed.

**SURESH KAIT
(JUDGE)**

SEPTEMBER 11, 2015

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