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

*Date of Decision: May 14, 2015*

+ **CRL.M.C. 5610/2014 & CrI.M.A.19152/2014**

OM PRAKASH ..... Petitioner  
Through: Ms. Gaganpreet Chawla, Advocate  
versus

GAJENDER KUMAR ..... Respondent  
Through: Mr. Inderpal Khokar, Advocate

**CORAM:  
HON'BLE MR. JUSTICE SUNIL GAUR**

% **JUDGMENT**  
**(ORAL)**

Impugned order of 1<sup>st</sup> September, 2014 rejects petitioner's application under Section 311 of Cr.P.C. by observing that sufficient opportunities have been given to petitioner to cross-examine complainant in proceedings under Section 138 of *the Negotiable Instruments Act, 1881*.

Learned counsel for petitioner submits that out of the five opportunities given, on two dates, respondent-complainant was not present in the court and on the 3<sup>rd</sup> date, the Presiding Officer was on leave and two effective opportunities were given but due to non-availability of the counsel, complainant could not be cross-examined. Learned counsel for petitioner submits that petitioner has not cross-examined complainant

at all and so, subject to cost, one effective opportunity be granted to petitioner to cross-examine complainant. This petition is strongly opposed by learned counsel for respondent, who submits that petitioner is only delaying the proceedings and the order-sheets of the trial court clearly reveal the negligent conduct by petitioner and so, this petition ought to be dismissed.

Upon hearing and on perusal of the impugned order and the material on record, I find that right to cross-examine is a valuable right and its denial would amount to denial of fair trial. No doubt, petitioner has been negligent but for this, petitioner can be always put to terms. This petition is allowed subject to cost of ₹25,000/- to be paid to complainant by petitioner when he appears before the trial court on the date fixed for cross-examination.

This petition and the application are accordingly disposed of.

*Dasti.*

**(SUNIL GAUR)**  
**JUDGE**

**MAY 14, 2015**

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