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

Date of Decision: July 17, 2015

+ **CRL.M.C. 2400/2015 & CrI.M.A.8357/2015**

RAMESH CHAND @ RAMESH KUMAR Petitioner
Through: Mr. R.P. Luthra and Mr. Sourabh
Luthra, Advocates

versus

STATE & ANR Respondents
Through: Ms. Nishi Jain, Additional Public
Prosecutor for respondent-State
Mr. Abhishek Kumar and Mr. H.
Kumar, Advocates for respondent
No.2

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

**JUDGMENT
(ORAL)**

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In this petition, quashing of impugned order of 5th April, 2014 is sought on the ground that opportunity to file application under Section 145(2) of *the Negotiable Instruments Act, 1881* has been illegally denied resulting in closure of respondent-complainant's evidence.

At the hearing, learned counsel for the petitioner pressed this petition *qua* the first prayer made in this petition i.e. to seek quashing of impugned order on the ground that the prayer for pass-over was not entertained by the trial court. It was submitted by learned counsel for

petitioner that the impugned order is quite harsh and results in miscarriage of justice and so, it deserves to be quashed.

Learned counsel for respondent-complainant supported the impugned order and submitted that petitioner was earlier also granted adjournment for filing application under Section 145(2) of *the Negotiable Instruments Act, 1881* but he had not filed it and again opportunity was sought to do so. It was controverted that prayer for pass-over was declined and it was asserted that petitioner is delaying the proceedings under Section 138 of *the Negotiable Instruments Act, 1881* on one pretext or the other.

During the course of hearing, learned counsel for petitioner had drawn the attention of this Court to the affidavit of petitioner's counsel which is to the effect that prayer for pass-over was declined by trial court at about 12:00 Noon. Since learned counsel for respondent-complainant controverted the stand taken in the aforesaid affidavit, therefore, impugned order cannot be quashed on this ground alone. However, upon hearing and on perusal of the impugned order and the material on record, I find that impugned order is indeed harsh one as due to non-appearance of counsel, a party cannot be deprived of the right to fair trial. Instead of denying opportunity to petitioner to file application under Section 145(2) of *the Negotiable Instruments Act, 1881* resulting closure of respondent-complainant's evidence, trial court ought to have given one more opportunity, subject to suitable costs.

In light of the aforesaid, impugned order is hereby quashed subject to cost of ₹25,000/- to be paid by petitioner to respondent-complainant at the time of his cross-examination, after affording one effective

opportunity to petitioner to file application under Section 145(2) of *the Negotiable Instruments Act, 1881* within a week from today.

With the aforesaid directions, this petition and the application stand disposed of.

(SUNIL GAUR)
JUDGE

JULY 17, 2015

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