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

+ **CRL.M.C. 62/2016**

AJAY KUMAR GUPTA Petitioner

Through: Mr. Nitin Sehgal, Advocate.

versus

THE STATE Respondent

Through: Mr. Ashok K. Garg, APP for the
State.

Ms. Pragnya, Advocate for
respondent No. 2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **25.07.2016**

CrI.M.A. 11009/2016 (Exemption)

Allowed, subject to all just exceptions.

CrI. M.A. 11008/2016 (Restoration)

Notice. Learned APP for the State and learned counsel for the respondent No.2 accepts notice. For the reasons stated in the application CrI.M.C. 62/2016 is restored to its original position.

Application is disposed of.

CRL.M.C. 62/2016 and CrI. M.A. 263/2016 (stay)

1. By this petition, the petitioner challenges the order dated 13th August, 2015 whereby the petitioner's right to further cross-examine PW-3 the complainant was closed. The reasons for closing further cross-examination of PW-3 by the learned Trial Court in the order dated 13th August 2015 are as under:

“Chargesheet in the present case has been filed on 22.09.2007 and cognizance taken on the same date. Accused have been summoned for 22.02.2008. The charge has been framed on 24.10.2008 and matter was fixed for evidence. On 02.01.2009 prosecution evidence has been started. Evidence of the complainant as PW3 was started on 02.01.2009. Thereafter, for one or the other reason as observed in the ordersheets i.e. filing of various applications and the pendency of the appeals, the examination of PW3 could only be completed on 28.06.2012. For clarity, it is to be mentioned that PW3 was examined on 02.01.2009, 04.09.2009, 19.08.2011 and completed on 28.06.2012.

On 28.06.2012 after completion of examination in chief, cross-examination of PW3 was started though, she was not cross-examined on that date. Thereafter, on 08.08.2012, 11.09.2012, 03.12.2012, 31.01.2013, 04.04.2013, 08.05.2013, 27.05.2013, 05.08.2013, 16.09.2013, 08.10.2013, 17.10.2013, 22.10.2013, 11.12.2013, 17.12.2013, 07.03.2014, 28.03.2014, 22.04.2014, 04.07.2014, 07.08.2014, 28.08.2014, 25.09.2014, 16.10.2014, 30.10.2014, 03.12.2014, 29.01.2015, 03.02.2015, 26.03.2015, 28.05.2015 and finally on 22.07.2015 opportunities were granted to the accused to complete the cross-examination of PW3. On 22.07.2015, last and final opportunity was granted to the accused to complete the cross-examination of the complainant. It has been made clear in that order that only one final opportunity for completing the cross-examination of the complainant was granted.

It is also to be noted that the examination of the complainant runs into 16 pages and till date counsel for the accused has cross examined the complainant running into 46 pages. Counsel for the accused has cross-examined the complainant on 08.08.2012, 08.05.2013, 28.05.2015, 09.07.2015 and today but fails to complete the cross-examination. It is not out of place here to mention the landmark judgment of Hussnnaira Khatoon’s case wherein Hon’ble Supreme Court has considered the right of speedy trial

as one of the fundamental rights. Also, the observations of Hon'ble Supreme Court in State of UP Vs. Shambu Nath Singh AIR 2001 SC 1403 and Rajdeo Sharma Vs. State of Bihar MANU/SC/0640/1998 wherein directions have been passed with respect to the completion of the cross-examination of the witnesses which cannot be ignored.

As already discussed, as above mentioned, accused has been given ample effective opportunities on various dates to complete the cross-examination of the complainant and today also he has given the complete day to complete the cross-examination of the complainant but he has failed to complete the same. It is also to be mentioned that vide order dated 28.05.2015, last and final opportunity was granted to the accused to complete the cross-examination of the complainant. Then, again, vide order dated 09.07.2015, again one more final opportunity was granted to the accused for completion of cross-examination of the complainant. Thereafter, again, it is the accused only who has taken the adjournment on 10.07.2015 and 22.07.2015 for completing the cross-examination of complainant. Today, again, accused has miserably failed to complete the cross-examination of the complainant which runs till the complete court time. Thus, as already sufficient effective opportunities have been given to the accused to complete the cross-examination of complainant, but of no use now, the right of the accused to further cross-examine the complainant is hereby closed.”

2. The petitioner also challenges the order dated 23rd November, 2015 passed by the learned Additional Sessions Judge whereby the revision petition filed challenging the order dated 13th August, 2015 was dismissed. The learned Additional Sessions also noted that despite more than 30 opportunities being given cross-examination of PW-3 was not completed and thus there was no illegality in the order dated 13th August, 2015. Hence the present petition.

3. Before this Court learned counsel for the petitioner contends that the finding of the two Courts that more than 30 opportunities were granted is incorrect. The dates noted by the learned Trial Court and the learned Additional Sessions Judge were not for the purposes of cross-examination of PW-3 but mainly for deciding the application of the petitioner under Section 340 Cr.P.C.

4. A perusal of the order sheet of the learned Trial Court would reveal that the evidence of the complainant PW-3 started on 2nd January, 2009 and while the same was in progress, the petitioner preferred number of applications. Finally her examination-in-chief could be concluded only on 28th June, 2012. After 28th June, 2012 the complainant was partly cross-examined on 8th August, 2012 where after accused was absent on 11th September, 2012, however later he appeared in the day. The complainant could not appear on 3rd December, 2012 and on 31st January, 2013 as learned PO was on training. On 4th April, 2013 again adjournment was sought on behalf of the petitioner on the ground that the main counsel is not available. On 8th May, 2013 the complainant was partly cross-examined and the remaining cross-examination was deferred for 27th May, 2013 when again she was partly cross-examined. For the remaining cross-examination of PW-3 finally opportunities were granted for 5th August, 2013 and 6th August, 2013. It was clarified that in case defence counsel fails to complete the cross-examination of PW-3 on the said dates, no further opportunity to cross-examine will be granted. On 5th August, 2013 the complainant had to be discharged unexamined as she was not feeling well and dates of 16th and 17th September, 2013 were fixed for her further cross-examination. However, an adjournment was sought on those dates as the arguing counsel

was unwell. On 8th October, 2013 an application under Section 340 Cr.P.C. was filed by the petitioner against the complainant on which arguments continued. Number of adjournment were sought for arguments on the application by learned counsel for the petitioner when finally the application was disposed of on the ground that the same can be decided after appreciation of evidence at the stage of trial. Matter was listed for further cross-examination of the complainant on 3rd December, 2014 when again it was adjourned as the complainant's counsel was not present. Learned counsel for the petitioner insisted that first enquiry under Section 340 Cr.P.C. should proceed and only then further cross-examination of PW-3/ complainant could be done. However, learned Trial Court fixed the date of 26th March, 2015 for the cross-examination of the complainant when neither the complainant nor the counsel for the accused were available. On 28th May, 2015 PW-3 was further cross-examined, however her cross-examination was deferred at request of learned defence counsel as he was not available after lunch. On 9th July, 2015 further cross-examination was conducted when counsel for the petitioner sought transfer of the case to another Court. The said application was dismissed. On the next date of hearing i.e. 22nd July 2015 lawyers were not available for cross-examination and thus the matter was listed for 13th August, 2015.

5. Even if 30 dates were not fixed for the cross-examination of the complainant it is clear that the complainant was being cross-examined since long and to avoid cross-examining the complainant further and concluding the trial, dilatory tactics were adopted by the petitioner at every stage. Substantial cross-examination of the complainant had been done. On a query raised to the learned counsel for the petitioner as to what further cross-

examination has to be carried out, learned counsel could not point out any aspect on which further cross-examination is needed. Considering the facts and circumstances of the case, I find no reason to interfere with the two orders dated 13th August, 2015 and 23rd November, 2015.

6. Consequently, petition and application are dismissed.

7. Trial Court Record be sent back forthwith.

MUKTA GUPTA, J.

JULY 25, 2016

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