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

**DECIDED ON : 19<sup>th</sup> July, 2016**

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**CRL.M.C. 984/2015 & Crl.M.A.3684/2015 (Stay)**

S P GARG

..... Petitioner

Through : Mr.Ranjit Khatri, Advocate.

versus

STATE & ANR.

..... Respondents

Through : Mr.Raghuvinder Varma, APP.

**CORAM:**

**HON'BLE MR. JUSTICE S.P.GARG**

**S.P.GARG, J. (ORAL)**

1. Present petition has been filed by the petitioner under Section 482 Cr.P.C.to challenge the legality and correctness of an order dated 28.01.2015 (date inadvertently mentioned as 27.01.2015 in the order sheet) of learned Metropolitan Magistrate whereby in Complaint Case No.126/01 petitioner's right to cross-examine the witnesses in pre-charge evidence was closed. Notice of the petition was sent to respondent No.2/complainant who opted not to put appearance despite service. Vide order dated 18.05.2016 respondent No.2's right to file reply was forfeited.

2. I have heard the learned counsel for the parties and have examined the file. The petitioner is facing trial in a Complaint Case instituted by respondent No.2. The petitioner along with one R.K.Tripathi has been summoned to face proceedings under Sections 420/467/468/471/34

IPC. R.K.Tripathi has already been declared Proclaimed Offender. Respondent No.2 took various dates to furnish fresh address of Mr.R.K.Tripathi and finally on 28.09.2013, he was declared Proclaimed Offender. The matter was adjourned for 10.11.2013 to record pre-charge evidence. On 10.03.2014, the parties adopted pre-summoning evidence as post-summoning/pre-charge evidence. On 28.01.2015 petitioner's right to cross-examine the complainant was fortified as his counsel could not appear that day due to backache. Order-sheet records that Ms.Sunaina Kumari had put appearance as proxy counsel and had requested for adjournment due to physical ailment of the main counsel. The request was declined by the learned Metropolitan Magistrate as it was the final opportunity to cross-examine the complainant who had come from Mumbai that day. Nothing is, however, discernible if the complainant had travelled from Mumbai that day. On the previous date, on joint request the matter had been adjourned for pre-charge evidence.

3. The petitioner had put appearance before the Trial Court continuously on various dates. Due to inability of the petitioner to cross-examine the complainant on the date i.e.28.01.2015 due to non-availability of his counsel having physical ailment, the impugned order depriving him to cross-examine the complainant has resulted in miscarriage of justice. Adverse inference is to be drawn against the complainant for not putting appearance before this Court to contest the petition.

4. In the interest of justice and to enable the petitioner to get the case decided on merits, he is permitted to cross-examine the witnesses to be examined in pre-charge evidence. The impugned order dated 28.01.2015 is set aside.

5. Parties are directed to appear before the Trial Court on the date fixed. The Trial Court shall give one effective date to the petitioner to cross-examine the complainant in pre-charge evidence.

6. The petition stands disposed of in the above terms.

**(S.P.GARG)**  
**JUDGE**

**JULY 19, 2016**

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