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

+ CRL.M.C. 2839/2016

M/S. SHUBHAM CREATIONS

..... Petitioner

Represented by: Mr. Ravi Tikania, Advocate.

versus

M/S. DURGA FAB

..... Respondent

Represented by: Mr. Sanjay Sharma and Mr.  
Deva Mani Mishra, Advocates.

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**ORDER**

**22.08.2016**

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1. Aggrieved by the order dated 25<sup>th</sup> July, 2016 dismissing the application of the petitioner under Section 311 Cr.P.C. for recalling the complainant for cross-examination, the petitioner prefers the present petition.

2. A complaint was filed by the respondent under Section 138 of the Negotiable Instruments Act being CC No. 526116/16 titled as Durga Fab vs. Shubham Creations. The respondent/complainant was under cross-examination however, on 23<sup>rd</sup> February, 2016 the same was deferred for the reason that the complainant/respondent did not bring the original documents.

3. On 16<sup>th</sup> May, 2019 when the matter was listed since the petitioner was not present his non-bailable warrants were issued for 1<sup>st</sup> July, 2016 on which date the complainant expressed his inability to produce the original documents. The Court granted opportunity to the petitioner for further cross-examination of the complainant but since the counsel for the petitioner was not present hence evidence of the complainant was closed on 1<sup>st</sup> July,

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2016. Hence the present petition.

4. The impugned order also notices that last and final opportunity was granted to the learned counsel for the accused to cross-examine the complainant on 3<sup>rd</sup> December, 2015 subject to cost of ₹1,500/- which cost has not been deposited.

5. Today before this Court learned counsel for the petitioner has handed over a cost of ₹1,500/- to the learned counsel for the respondent. As noted above the respondent/complainant was under cross-examination when on 23<sup>rd</sup> February, 2016 the cross-examination had to be deferred for want of original documents. Due to non-presence of the petitioner non-bailable warrants were issued and on 1<sup>st</sup> July, 2016 when the complainant stated that he could not produce the original documents, the right of the petitioner to further cross-examine the respondent was closed. Though an alert litigant should have been ready for cross-examination on 1<sup>st</sup> July, 2016 immediately after the complainant refused to produce the documents however, the present was a case where one opportunity was required to be granted to the petitioner for the reason he would not have known whether the complainant would produce the documents on 1<sup>st</sup> July, 2016.

6. Considering the facts and circumstances of the case, subject to the petitioner paying a cost of ₹2,000/- to the respondent on the next date of hearing one opportunity is granted to the petitioner to cross-examine the respondent/complainant.

7. Petition is disposed of. Order dasti.

**MUKTA GUPTA, J.**

**AUGUST 22, 2016/‘vn’**  
**CRL.M.C. 2839/2016**

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