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

+ **CRL.M.C. 4056/2016**

RAKESH KUMAR

..... Petitioner

Represented by: Mr. Amit Jain, Advocate.

versus

STATE (NCT OF DELHI) & ANR.

..... Respondent

Represented by: Ms. Rajni Gupta, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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27.10.2016

Crl. M.A. No. 16949/2016 (Exemption)

Allowed, subject to all just exceptions.

Crl. M.A. No. 16950/2016 (Delay in refiling)

For the reasons stated in the application 19 days delay in refiling the petition is condoned.

Application is disposed of.

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1. Aggrieved by the orders dated 26th April, 2012 and 12th September, 2014 passed by the learned Trial Court granting exemptions to the respondent Nos. 2 and 3 from appearance in the trial in case FIR No. 73/2011 under Sections 420/468/465/471 IPC registered at PS Dwarka, North, the petitioner who is the complainant in the FIR prefers the present petition.

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2. Learned Trial Court vide order dated 26th April, 2012 on the application of respondent Nos. 2 and 3 under Section 205 read with Section 317 Cr.P.C. granted them permanent exemption from appearance primarily on the ground that both the respondent Nos. 2 and 3 were housewives, residents of Ludhiana and on each date of hearing it took them eight hours to reach to the Court. The learned Trial Court also noted that the accusation in the FIR pertained to filing a forged affidavit before the Registrar of Trademarks of the partnership firm M/s Ambika Industrial Corporation Ltd. and the respondent Nos. 2 and 3 were the two partners out of the five partners of the said firm. Since the respondent Nos. 2 and 3 by the affidavit did not dispute their identity, the court thought it fit to grant permanent exemption. While granting exemption from appearance, the learned Trial Court imposed the following conditions:

- “1. Accused shall file an affidavit indicating that they do not dispute or challenge their identity and that they shall be represented by their counsel on all dates of hearing and their evidence can be recorded in the case in their absence and they shall never raise objection to the progress of the case made in their absence.*
- 2. They shall also indicate in the affidavit that they shall appear in the court as and when they are directed to do so.*
- 3. Exemption shall be deemed to have been granted only after charge is framed in the present matter.*
- 4. The affidavit shall indicate the name of the lawyer who is going to represent the accused in the present matter and an undertaking that in case the lawyer fails to*

appears, the same may be treated as the non appearance on behalf of the accused and coercive steps may be taken to ensure the presence of the accused in the Court.”

3. This order of grant of permanent exemption to the respondent Nos. 2 and 3 was challenged by the State before this Court in Crl. M.C. No.863/2015 wherein this Court held that the permanent exemption to the respondent Nos. 2 and 3 who were women aged 41 and 50 years and were resident of Ludhiana, Punjab was granted subject to certain conditions and there was no occasion for the State to move an application unless there is an allegation of misuse. This Court also noted that none of the conditions imposed had been flouted and there is no material placed on record that the respondent Nos. 2 and 3 were instrumental in delay in the trial. The Court also noted that the Trial Court was at liberty to withdraw the exemption any time.

4. Having heard learned counsel for the parties, I find no error in the order dated 26th April, 2012 granting permanent exemption from appearance to the respondent Nos. 2 and 3 subject to certain conditions as noted above. Further this court has already held that neither there is any violation of terms and conditions imposed nor any delay has been caused in the trial on the account of exemptions from appearance of respondent Nos. 2 and 3 and there are no allegations of misuse of concession whatsoever.

5. Considering the fact that the impugned orders have already been considered by this Court and upheld and no new circumstance has been pointed out, I find no reason to interfere with the impugned orders.

6. Petition is dismissed.

OCTOBER 27, 2016
‘vn’

MUKTA GUPTA, J.