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

+ CRL.M.C. 2941/2016 & Crl.M.A. 12633/2016

MOHINDER KUMAR VERMA Petitioner

Through Mr.Manish Kumar, Adv.

versus

STATE Respondent

Through Mr.M.P. Singh, APP.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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23.08.2016

The present petition has been filed against the order dated 04.05.2016 in the complaint filed for the offences under Sections 179/181/182/193/196/199/200 IPC in the year 2001 and since then the complaint is pending.

The impugned order challenged by the petitioner is dated 04.05.016. Perusal of record shows that one application was moved to lead defence evidence by way of affidavit. The application was dismissed by the Court below vide order dated 01.10.2015 and thereafter adjournment was sought on the ground that revision petition was pending before the Court of Session. Admittedly, there was no stay granted by the Court of Session. Again on the next date, last opportunity was granted on the request of the petitioner to lead defence evidence and again on 04.05.2016, adjournment application was moved. It was clarified that there was no stay in the proceedings

by this Court and thereafter discussing the case, the defence evidence was closed and now the case is fixed for 29.08.2016.

I have heard the learned counsel for the petitioner.

Submission made by the counsel for the petitioner is that the petitioner has moved the application to lead defence evidence by way of affidavit which was wrongly dismissed by the Court below vide order dated 01.10.2015. Admittedly, thereafter another opportunity was also granted for adducing defence evidence. Submission made by the counsel for the petitioner that he may be permitted to lead the defence evidence i.e. statement under Section 315 Cr.P.C. by way of affidavit, is apparently not acceptable primarily on two grounds. Firstly, if the person can depose before an Oath Commissioner then why he cannot depose before the Court and vice versa if a person cannot depose before the Court then how he can depose before an Oath Commissioner. It would lead to the only inference that the affidavit shall be prepared on the instructions of somebody else and the deponent had to just put his signatures on the same and then it would be placed before the Court. Secondly the most important reason is that the person filing the affidavit or the deposition on oath is duty bound under the law to be present for the purpose of cross-examination and if he cannot depose before the Court where is the question of his cross-examination.

In such a circumstances, this Court is of the considered opinion that the order dated 01.10.2015 passed by the Court below was legally correct and justifiable and cannot be quashed on the grounds mentioned in the petition. Admittedly, the complaint was filed in the

year 2001 and now we are in the year 2016. These are lame excuses by the petitioner to delay the proceedings.

In view of the above discussion, the present petition and application Crl.M.A. 12633/2016 are dismissed.

P.S.TEJI, J

AUGUST 23, 2016
dd