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

+ **CRL.M.C. 3389/2016**

ANIL DANG

..... Petitioner

Represented by: Mr. Ajay Digpaul, Adv.

versus

STATE AND ANOTHER

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

15.09.2016

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Crl.M.A. 14349/2016

Exemption allowed subject to just exceptions.

CRL.M.C. 3389/2016 & Crl.M.A. 14348/2016 (stay)

The petitioner is aggrieved by the order dated 20th August, 2016 whereby the revision filed by the petitioner was dismissed upholding the order dated 16th December, 2014 passed by the learned Metropolitan Magistrate-02(NI Act) South-East District in CC No.1070/14 in the complaint case titled as 'IFCI Factors Ltd. Vs. Multi Flex Lami Print Ltd. & Ors.' dismissing the application under Section 311 Cr.P.C. filed by the petitioner for recalling of the complainant for cross-examination.

By the decision reported as 171 (2010) DLT 51 Rajesh Agarwal Vs. State & Anr. this Court clarified that the proceedings in complaint case

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under Section 138 of the Negotiable Instruments Act (in short the NI Act) has to be a summary procedure and it cannot be delayed as a summons trial. It was directed that immediately on entering appearance the accused is required to file an application under Section 145(2) of the NI Act and if the same discloses some defence for which cross-examination of the complainant is warranted, an opportunity to cross-examine the complainant will be granted.

It is admitted by learned counsel for the petitioner who appears for the accused in the above-noted complaint that till date no application under Section 145(2) of the NI Act has been filed. Thereafter thrice the opportunity was granted to the petitioner to lead defence evidence, however he failed to adduce the evidence as well. Having failed to adduce his evidence, the petitioner then filed an application under Section 311 Cr.P.C.

In view of the decision of this Court in Rajesh Agarwal (supra), since till date no defence has been brought out by the petitioner, no recalling of the complainant can be granted for cross-examination by the petitioner. I find no infirmity in the two impugned orders.

Petition and application are dismissed.

MUKTA GUPTA, J.

SEPTEMBER 15, 2016
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