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

+ **CRL.M.C. 4573/2016**

**BUDH MITRA GAUTAM**

..... Petitioner

Represented by: **Mr. Prabodh Shukla, Adv.**

versus

**SHIV NARAIN**

..... Respondent

Represented by:

**CORAM:**

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

**ORDER**

**08.12.2016**

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**CrI.M.A. 19152/2016**

Exemption allowed subject to just exceptions.

**CRL.M.C. 4573/2016 & CrI.M.A. 19153/2016 (stay)**

1. Challenging the orders dated 28<sup>th</sup> June, 2016 passed by the learned Metropolitan Magistrate and 8<sup>th</sup> October, 2016 passed by the learned ASJ in the revision petition, the petitioner prefers the present petition.
2. The petitioner is facing trial in complaint case No.556/01/10 for offences punishable under Section 138 of the Negotiable Instruments Act (in short the NI Act). The petitioner preferred an application under Section 315 Cr.P.C. praying that he be allowed to examine himself as a defence witness which was dismissed by the learned Metropolitan Magistrate vide order dated 28<sup>th</sup> June, 2016. The reasoning of the learned Metropolitan Magistrate while dismissing the application was that the petitioner was granted number

of opportunities to lead defence evidence and vide order dated 10<sup>th</sup> July, 2015 the opportunity to lead defence evidence was closed by the Trial Court and matter listed for final arguments. However, thereafter on 8<sup>th</sup> October, 2015 the petitioner filed an application under Section 311 Cr.P.C. for recalling the defence witnesses which application was dismissed on 21<sup>st</sup> January, 2016. Challenging the said order dated 21<sup>st</sup> January, 2016 the petitioner preferred a revision petition which was dismissed by the learned ASJ vide order dated 30<sup>th</sup> April, 2016 where after the petitioner filed the application under Section 315 Cr.P.C. to examine himself in defence. The learned Trial Court noted that the application was only yet another dilatory tactic of the petitioner and filed with a view to re-open his defence evidence which had already been closed. Thus the application was dismissed with a cost of ₹2000/- to be deposited with the DLSA (West).

3. The learned ASJ vide the impugned order dated 8<sup>th</sup> October, 2016 noted that while disposing of the earlier revision petition on 30<sup>th</sup> April, 2016 the Court had noted in detail, the conduct of the petitioner during the proceedings which was highly condemnable and considering the past conduct of the petitioner, the application filed could be termed as yet another attempt to delay the proceedings. Further the petitioner has not been able to reveal any reasonable ground for interfering with the order dated 28<sup>th</sup> June, 2016 passed by the learned Metropolitan Magistrate.

4. Before this Court also learned counsel for the petitioner has not been able to show as to why in the first instance the petitioner did not want to examine himself and after his defence evidence was closed and application under Section 311 Cr.P.C. for recalling of the defence witness was dismissed, the petitioner came up with the plea of examining himself. In the

application under Section 315 Cr.P.C. filed before the learned Metropolitan Magistrate the petitioner only stated that he intends to examine some witnesses from his side to rebut the evidence of the prosecution and examine himself as a defence witness. Nothing has been stated to justify as to why in the first instance the petitioner did not deem it fit to examine himself as a defence witness and now at this belated stage after his defence evidence has been closed and his application for recalling of the defence witnesses has also been dismissed which orders have attained finality, the petitioner seeks to examine himself. Even in the revision petition filed before the learned Trial Court the petitioner has not justified as to what defence he wants to lead by examining himself and it is merely stated that it is in the interest of justice and for a just decision the petitioner is required to be examined.

5. Considering the fact that the petitioner never intended to examine himself in the defence and never cited himself as a defence witness earlier and only at a belated stage came up with this plea to examine himself that too without showing what defence he wants to lead, this Court finds no error in the order dated 28<sup>th</sup> June, 2016 passed by the learned Metropolitan Magistrate or the impugned order dated 8<sup>th</sup> October, 2016 passed by the learned ASJ.

6. Petition and application are dismissed.

**MUKTA GUPTA, J.**

**DECEMBER 08, 2016**  
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