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

**DECIDED ON : FEBRUARY 07, 2017**

+ **CRL.M.C. 1041/2016 & CrI.M.A.4471/2016**

**AKSHAY KUMAR**

..... Petitioner

Through Ms. Surinder Kaur, Advocate

versus

**SANJEEV JAIN**

..... Respondent

Through Mr. Ansar Ahmad, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE S.P.GARG**

**S.P.GARG, J. (ORAL)**

1. Present petition under Section 482 Cr.P.C. has been preferred by the petitioner to challenge the legality and correctness of an order dated 04.02.2016 of learned Additional Sessions Judge in CrI.Rev.P.No.05/2016 by which the order of learned Metropolitan Magistrate dated 11.12.2015 declining to accept application under Section 311 Cr.P.C. was upheld. The petition is contested by the respondent.

2. I have heard the learned counsel for the parties and have examined the file. Admittedly, the petitioner is facing trial under Section 138 Negotiable Instruments Act in two Complaint Cases No.156/1/13 and 157/1/13. It is also not in dispute that the petitioner was given various

opportunities to produce evidence in defence. On 28.10.2015, the learned Metropolitan Magistrate closed the defence evidence. Application under Section 311 Cr.P.C. was filed subsequently to produce certain witnesses, it did not find favour with the Trial Court. The revision petition resulted in its dismissal.

3. Since the petitioner had failed to produce defence evidence despite number of opportunities granted by the court below, the order closing defence evidence and dismissal of subsequent application under Section 311 Cr.P.C. cannot be faulted. In the application under Section 311 Cr.P.C., the petitioner introduced names of Tri Bhuwan Singh, Pawan Prakash and Ashwani to be produced by him as defence witnesses. Their names did not find mention in the earlier list of witnesses. The petitioner cannot be permitted to delay the disposal of the proceedings by introducing different names of witnesses at different stages of the trial on his own free wish and fancy.

4. Trial Court record reveals that on 28.10.2015 one witness, Raj Kumar, could not put appearance due to death of his relation. In the interest of justice, only Raj Kumar can be permitted to be examined as defence witness by the petitioner. For inconvenience, the respondent can be compensated with costs. For producing and examining other witnesses, the petitioner's request cannot be acceded to.

5. Resultantly, the petitioner shall be given only one opportunity to produce Raj Kumar as defence evidence on the next date of hearing before the Trial Court on his responsibility subject to payment of costs of ₹10,000/- to the respondent.

6. The petition stands disposed of in the above terms. All pending application(s) also stand disposed of.

**(S.P.GARG)**  
**JUDGE**

**FEBRUARY 07, 2017**  
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