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

DECIDED ON : 7th FEBRUARY, 2017

+ **CRL.M.C.2020/2016 & CRL.M.A.No.8561/2016**

SANJAY BHARADWAJ

..... Petitioner

Through : Mr.Sunil Kumar, Advocate.

VERSUS

STATE & ANR.

..... Respondents

Through : Ms.Manjeet Arya, APP.

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 27.08.2015 of learned Metropolitan Magistrate whereby opportunity to the petitioner to cross-examine the complainant was closed. Notice of the petition was given to the respondent No.2. None put appearance on behalf of the respondent No.2 despite service.

2. I have heard the learned counsel for the petitioner and have examined the file. Petitioner is facing proceedings under Section 138 Negotiable Instruments Act instituted by respondent No.2 in Complaint Case No.14695/1/11. Perusal of the record reveals that vide order dated 08.11.2013, the petitioner was allowed to cross-examine the complainant. The matter was listed for complainant's evidence for 20.03.2014. On that

day complainant did not appear and the case was adjourned to 21.08.2014. On that day, application for exemption was moved on behalf of the accused which was not allowed. On the same day, the opportunity to cross-examine the complainant was closed and the matter was listed for recording statement under Section 313 Cr.P.C. Apparently, the petitioner was not given reasonable opportunity to cross-examine the complainant. For petitioner's default on one day i.e. 21.08.2014 to cross-examine the complainant, his right to cross-examine the complainant was declined. Apparently, the impugned order has caused hardship to the petitioner. Subsequently, application under Section 311 Cr.P.C. was filed to recall the complainant for cross-examination and vide order dated 27.08.2015 it resulted in its dismissal observing that sufficient opportunities were given to the petitioner to cross-examine the complainant.

3. In the interest of justice and to enable the petitioner to avail valuable right to establish his innocence through cross-examination of the complainant and the fact that he was not given reasonable opportunity to cross-examine the complainant, impugned order cannot be sustained and is set aside.

4. The complainant shall be cross-examined on the date fixed or any other date given by the Trial Court for that purpose.

5. The petition stands disposed of.

6. Pending application (if any) also stands disposed of.

(S.P.GARG)
JUDGE

FEBRUARY 07, 2017 / tr