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

+ CRL.M.C. 3228/2017 & CRL.M.A.No.13974/2017(stay) &
CRL.M.A.No.13975/2017 (Early hearing)

SACHIIN KUMAR SUMAN

.....Petitioner

Through: Mr. Harish Kumar Gupta, Advocate.

VERSUS

STATE (NCT OF DELHI) & ORS.

....Respondents

Through: Mr. Mukesh Kumar, APP for the State,
counsel for Respondent No.2 (appearance
not given) with Mr. Ram Kumar, Advocate.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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30.08.2017

1. On 18.08.2017 notice was issued in the present petition and the matter was fixed for hearing on 23.10.2017. On an application, bearing No. CRL.M.A. 13975/2017, the hearing was pre-poned and set down for final hearing today, while directing the Metropolitan Magistrate to withhold the pronouncement of judgement in case No.57761/2016 till further orders. Counsel for respondent No.2 is also present.
2. By way of the present petition filed under Section 482 Cr.P.C., the petitioner seeks setting aside of order dated 05.07.2017 passed by the Metropolitan Magistrate, Karkardooma Courts, Delhi in case No. 57761/2016 and order dated 02.08.2017 passed by the Special

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Judge (PC Act) CBI/East District, Karkardooma Courts, Delhi in
Crl. Revision No. 167/2017.

3. Briefly stating, the Magistrate vide order dated 05.07.2017, closed the defence evidence as despite ample opportunities being granted, petitioner/defendant failed to lead evidence and fixed the matter for final hearing. Aggrieved by the said order, the petitioner preferred a Criminal Revision Petition which was also dismissed, vide order dated 02.08.2017. Hence the present petition.
4. Mr. Harish Kumar Gupta, learned counsel for the petitioner contended that the Metropolitan Magistrate has wrongly attributed the delay in proceedings to the petitioner while closing his examination. Counsel submitted that the petitioner was partly examined on 22.02.2017 and thereafter on two occasions i.e. 27.03.2017 and 17.05.2017 the Presiding Officer was on leave. Counsel further stated that when the matter was called on 05.07.2017, the petitioner sought an adjournment on the ground of non-availability of his counsel. But the same was declined by the Presiding Officer and the matter was listed for final arguments.
5. On the other hand, Mr. Mukesh Kumar, learned APP appearing for the State submitted that the order passed by the Special Judge (PC Act) CBI is a reasoned order and no interference in the order dated 05.07.2017 and 02.08.2017 is called for.
6. Arguments have been heard.
7. In the present case, the complainant concluded his evidence on 19.04.2012 and the matter was posted for defence evidence on 05.12.2012. It is undisputed that during the examination stage

repeated applications under Section 311 Cr.P.C., Section 340 Cr.P.C. and Section 4 of The Indian Evidence Act, 1872 were moved on behalf of the petitioner, which were dismissed one after another.

8. On 22.02.2017, the petitioner herein examined himself as DW-1 in part. His further examination could not be conducted on 27.03.2017 and 17.05.2017 as the Presiding Officer happened to be on leave. On 05.07.2017, the petitioner sought an adjournment on the ground of non-availability of his counsel but his prayer was declined and opportunity to lead defence evidence was closed.
9. It is a matter of record that the defence evidence was delayed for over more than 4 ½ years due to multiple applications preferred by the petitioner.
10. Considering the fact that although several opportunities had been granted to the petitioner to lead defence evidence, however to meet the ends of justice, this Court deems it appropriate to grant one last opportunity to the petitioner to examine himself, as he has already been partly examined on one previous occasion. The same shall be subject to payment of cost of Rs.25,000/- to the complainant in advance.
11. Parties are directed to appear in person before the Trial Court on the date already fixed i.e. on 06.09.2017. On that date the petitioner/defendant shall lead defence evidence between 02:30p.m. to 04:00 p.m. only as no further time shall be granted for the same. The cost shall be paid by the petitioner/defendant to the respondent/complainant before examination of defence evidence.

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Thereafter the Trial Court shall fix a date for cross-examination of the defence witness, as per the convenience of the board.

12. It is made clear that on 06.09.2017 counsel for the petitioner/defendant shall remain present before the learned Trial Court and will not seek any accommodation or adjournment in the matter. However, in case the Presiding Officer happens to be on leave on 06.09.2017 the matter shall be listed on the next working day and on that date the petitioner/defendant shall avail the opportunity to lead his defence evidence.
13. In view of the above, the order dated 05.07.2017 passed by the Metropolitan Magistrate in case in case No. 57761/2016 and order dated 02.08.2017 passed by the Special Judge (PC Act) CBI, are set aside.
14. The date of 23.10.2017 stands cancelled.
15. Accordingly the petition stands disposed of.
16. Copy of the order be given dasti under the signature of Court Master.

CrL.M.A.Nos.13974/2017(stay) 13975/2017 (Early hearing)

In view of the order passed in the main petition, the present applications are rendered infructuous and the same are disposed of.


SANGITA DHINGRA SEHGAL, J

AUGUST 30, 2017

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