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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1132/2018 & CRL.M.A. 4092/2018**

HEMANT LAMBA Petitioner
Through: Mr. Prince Arora with Mr. Kunal
Garg, Advocates.
versus

DIMPLE MAHNA Respondent
Through: Mr. Ehtesham Hashmi with Mr.
Akbar Siddque, Advocates.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER
% **16.08.2018**

On the criminal complaint No.190/2017 of the respondent, the petitioner has been summoned as accused by the court of Metropolitan Magistrate for offence punishable under Section 138 of Negotiable Instruments Act, 1881 (N.I. Act), the accusations relating to a cheque dated 25.09.2016 in the sum of Rs.1 lakh which, upon presentation, was dishonoured, no payment having been made by the petitioner, in spite of legal notice of demand.

The trial before the Metropolitan Magistrate commenced with notice under Section 251 of Code of Criminal Procedure, 1973 (Cr.P.C.) issued and served on 25.04.2017, the petitioner herein having pleaded “not guilty” seeking to lead defence evidence.

It appears the petitioner moved an application under Section 145(2) of N.I. Act seeking permission to cross-examine the complainant on the affidavit which had been filed in evidence. The said prayer was granted by

order dated 25.04.2017, photocopies of subsequent proceedings have not been placed on record. It is, however, conceded at the hearing that the opportunity thus granted, was not availed, it having been closed by subsequent order.

The petitioner, it appears, filed yet another application under Section 145(2) of N.I. Act which was dismissed with reference to the previous conduct by order dated 21.08.2017 subject to costs of Rs.10,000/- to be deposited with Advocate's Welfare Fund, Dwarka Courts.

The petitioner challenged the aforesaid order before the court of sessions by revision petition (C.R. No.448/2017) which came to be dismissed for non-prosecution on 24.10.2017.

The said order of revisional court was challenged by the present petition under Section 482 Cr.P.C. in March, 2018.

It is quite clear that the petitioner's design and effort has been to cause as much delay to the criminal process as possible. Be that as it may, the right to cross-examine is a valuable right available to an accused. Conceding this position, the counsel for the respondent/complainant fairly submitted that one more opportunity may be granted to the petitioner for cross-examination of the complainant though insisting that suitable costs and conditions be imposed.

In view of the above, the petition is allowed subject to costs of Rs.20,000/- to be paid by the petitioner to the respondent on the date next fixed before the Metropolitan Magistrate. The Metropolitan Magistrate will fix a suitable date convenient to his calendar and, of course, convenient to the parties and their counsel ascertaining such position in advance. On such

date, the respondent/complainant shall present herself for her cross-examination by the counsel for the petitioner. It shall be the responsibility of the petitioner to ensure the presence of the counsel engaged duly briefed and instructed, ready to cross-examine the respondent/complainant on the first call of the matter.

No further adjournment shall be sought or granted by the Metropolitan Magistrate. The costs imposed as above shall be in addition to the costs imposed by the Metropolitan Magistrate. In case of any default in compliance with any of the conditions imposed above, the right to cross-examine would stand exhausted.

The petition and the application filed therewith are disposed of in above terms.

R.K.GAUBA, J

AUGUST 16, 2018

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