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

+ CRL.M.C. 2213/2018

MRINAL SEN

..... Petitioner

Through: Mr. J.L. Singh, Adv.

versus

NCT OF DELHI & ANR

..... Respondents

Through: Ms. Manjeet Arya, APP for State.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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27.04.2018

Petitioner is aggrieved by order dated 10th January, 2018 passed by the learned Metropolitan Magistrate, Delhi whereby application under Section 311 Cr.P.C. filed by the petitioner (accused) has been dismissed. Respondent no. 2(complainant) filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) against the petitioner before the trial court. After summons were served on the petitioner, he appeared in Court along with his counsel. Notice under Section 251Cr.P.C. was served on 12th May, 2014. Petitioner filed an application under Section 145(2) of the Act which was allowed vide order dated 4th December, 2014. Thereafter, as many as six opportunities were given to the petitioner to cross-examine the complainant. However, petitioner did not avail these opportunities, accordingly, his opportunity to cross-examine the complainant

was closed on 8th September, 2015. On 10th January, 2018, that is, after more than two years application under Section 311 Cr.P.C. was filed by the petitioner, which was dismissed by the impugned order. Trial court has noted that opportunities granted to the petitioner were not availed by him. Petitioner made a statement that he was not willing to lead any defence evidence, accordingly, defence evidence was closed. Matter is fixed for final arguments.

Learned counsel for the petitioner submits that petitioner has unfettered right to cross-examine complainant. It is submitted that on one occasion learned presiding officer was on leave, therefore, matter was adjourned; whereas on other occasion matter was referred to the Mediation Centre. Thus, petitioner could not cross-examine the complainant.

Be that as it may, admittedly four opportunities were given to the petitioner which he did not avail. Petitioner slept over his rights for almost two years and filed an application under Section 311 Cr.P.C. at belated stage. The conduct of the petitioner shows that he is only interested in dragging on the litigation as long as he can. Despite several opportunities granted to him petitioner did not cross-examine the complainant, accordingly, his opportunity to cross-examine the complainant was closed

by the trial court. Thus, in my view, trial court order does not suffer from any perversity. In view of the above discussions, petition is dismissed. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

APRIL 27, 2018

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