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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 29th November, 2018

+ CRL.M.C. 6032/2018 & CrI.M.A. 48331-33/2018

SEW INFRASTRUCTURE LTD & ANR Petitioners

Through: Mr. Mohit Mathur, Sr. Adv.
with Mr. Jitendra Kr. Jha, Adv.

versus

STATE OF NCT OF DELHI & ANR Respondents

Through: Mr. Amit Ahlawat, APP for the
State.

+ CRL.M.C. 6033/2018 & CrI.M.A. 48334-36/2018

SEW INFRASTRUCTURE LTD. & ANR. Petitioners

Through: Mr. Mohit Mathur, Sr. Adv.
with Mr. Jitendra Kr. Jha, Adv.

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Amit Ahlawat, APP for the
State.

+ CRL.M.C. 6034/2018 & CrI.M.A. 48337-39/2018

SEW INFRASTRUCTURE LTD & ANR Petitioners

Through: Mr. Mohit Mathur, Sr. Adv.
with Mr. Jitendra Kr. Jha, Adv.

versus

STATE OF NCT OF DELHI & ANR Respondents

Through: Mr. Amit Ahlawat, APP for the
State.

+ CRL.M.C. 6035/2018 & CrI.M.A. 48340-42/2018

SEW INFRASTRUCTURE LTD & ANR Petitioners
Through: Mr. Mohit Mathur, Sr. Adv.
with Mr. Jitendra Kr. Jha, Adv.

versus

STATE OF NCT OF DELHI & ANR Respondents
Through: Mr. Amit Ahlawat, APP for the
State.

+ CRL.M.C. 6036/2018 & CrI.M.A. 48343-45/2018

SEW INFRASTRUCTURE LTD. & ANR. Petitioners
Through: Mr. Mohit Mathur, Sr. Adv.
with Mr. Jitendra Kr. Jha, Adv.

versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr. Amit Ahlawat, APP for the
State.

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

ORDER (ORAL)

1. These five petitions presented under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) bring a challenge to identical orders passed on 29.10.2018 by the Metropolitan Magistrate in the context of five different criminal cases – CIS Nos. 611545/2016, 612180/2016, 612196/2016, 612209/21016 and 612210/2016 – instituted by the second respondent against the petitioners, each on the allegations for offence under Section 138 Negotiable Instruments Act,

1881 (NI Act) having been committed qua different cheques. The cases were put on trial by notice of accusations being served on the petitioner on 20.11.2017. Upon the application under Section 145 (2), NI Act of the petitioners being allowed by order dated 05.02.2018, the complainant was called upon to face cross-examination. The cross-examination of the complainants' witnesses was concluded on 18.08.2018. The statements of petitioners (as accused) under Section 313 Cr.P.C. were recorded on 10.09.2018. Thereafter the cases entered the stage for defence evidence to be recorded on 06.10.2018. The petitioner concededly did not avail of the opportunity on the said date and the matter was adjourned for defence evidence on 29.10.2018 subject to payment of costs which order has been complied with.

2. The cases, thus, were before the Metropolitan Magistrate on 29.10.2018, for defence evidence. It is on that date, the Metropolitan Magistrate declined to adjourn and closed the opportunity for defence evidence listing the cases for final arguments, they being posted for such purposes on 17.11.2018.

3. Through the petitions at hand, it is pointed out that the petitioner was to examine its authorized representative Mr. G.S. Rana who was unwell and, on this account, an application for exemption from his personal appearance on that date had been moved. Though moving of the said application has been noted in the impugned order dated 29.10.2018, it is pointed out that the grounds for such exemption to be granted have not even been heard, the Metropolitan Magistrate dismissed the application noting therein the failure to lead defence

evidence with observations that the petitioners were “*deliberately protracting trial*”.

4. This Court, on the available material, is of the *prima facie* view that without the reasons for absence of G.S. Rana being considered, such observations leading to closure of the opportunity for defence evidence could not have been recorded.

5. The learned senior counsel submitted that aside from Mr. G.S. Rana, the authorized representative, the petitioners are to examine only one more defence witness namely Vipul Jain, whose name was reflected in the list of witnesses submitted on 10.10.2018. He also submitted that the petitioners undertake to produce both the witnesses on their own without the assistance of the court for securing their presence.

6. At this stage, the learned senior counsel submitted that he may be permitted to move an appropriate application before the Metropolitan Magistrate under Section 311 Cr.P.C. for additional opportunity to be given for production of the afore-mentioned witnesses on any date suitable to the calendar of the trial court to be granted, bringing to its notice the above noted observations of this Court. The petitioners are granted the liberty to move such application which, this court hopes and trusts, will be considered appropriately by the trial court keeping in view the expectation of fair procedure that the defence is entitled to effective opportunity to lead defence evidence.

7. The petitions and the applications filed therewith are disposed of accordingly with these observations.

8. *Dasti* under the signatures of Court Master.

R.K.GAUBA, J.

NOVEMBER 29, 2018

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