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

+ **CRL.M.C. 3987/2017**

SOMNATH ADHIKARI Petitioner

Through: Mr. Aditya Nayyar, Adv.

versus

THE STATE & ORS Respondents

Through: Ms. Manjit Arya, APP for State.

Counsel for respondent no.2
(appearance slip not given).

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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06.08.2018

Respondent no.2 filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against M/s SBS Cold Storage Ltd. (respondent no.3) wherein petitioner and his wife, that is, respondent no. 4 were impleaded as accused nos. 2 and 3. Notice was framed on 9th August, 2016. Petitioner's wife, that is, accused no. 3 filed an application under Section 145(2) of the Act for cross examination of the complainant which was allowed by the Trial Court. It is not in dispute that cross-examination of complainant has yet not commenced.

It is noted that Trial Court closed the opportunity of petitioner to file application under Section 145(2) of the Act vide order dated 20th October, 2016 on the ground that the same had not been filed despite opportunities

granted to him. Petitioner filed a Revision Petition, which has been dismissed by the Special Judge (PC Act), CBI, East, Karkardooma Court, Delhi vide order dated 12th September, 2017.

That is how petitioner is before this Court by way of present petition under Section 482 Cr.P.C.

Learned Revisional Court has observed that there was inordinate delay in filing the revision petition. Revision petition was filed on 6th September, 2017; whereas impugned order was passed on 20th October, 2016. Learned counsel for the petitioner took a plea before the Revisional Court that petitioner was in judicial custody in Bhubaneswar in a different case therefore he could not take effective steps in the present matter. He was taken into custody in second week of September, 2016. He was released on bail in the month of June, 2017. Only thereafter, he came to Delhi in the month of August, 2017 and took steps to file revision petition.

In the above facts, I am of the opinion that a lenient view should have been taken by the Metropolitan Magistrate since petitioner was in custody. Learned Metropolitan Magistrate ought to have allowed petitioner to file application under Section 145(2) of the Act subject to terms more so when cross-examination of complainant by the accused no. 3 has yet not

commenced. For the foregoing reasons, impugned orders are set aside and petitioner is granted liberty to move appropriate application under Section 145(2) of the Negotiable Instruments Act, 1881 before the concerned Metropolitan Magistrate within a week, subject to however costs of ₹10,000/- to be paid by the petitioner to respondent no.2 (complainant), before the trial court on the next date of hearing.

Parties to appear before the trial court on 13th August, 2018.

Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

AUGUST 06, 2018

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