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

+ CRL.M.C. 6361/2018

RAJ JAMES

..... Petitioner

Through: Mr. Zishaan Ishandari, Advocate

versus

SHARLA JAMES

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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11.01.2019

Crl. M.A. 544/2019 (early hearing)

For the reasons set out in the application, the prayer is granted.
The hearing on the main petition (Crl. M.C 6361/2018) is pre-poned
for today.

The application is disposed of with these observations.

The next date of hearing i.e. 11.02.2019 earlier fixed in the
matter stands cancelled.

Crl. M.A. 49690/2018 (Exemption)

Allowed subject to just exceptions.

CRL.M.C. 6361/2018 and Crl. M.A. 49689/2018 (stay)

It is trite that mere putting of an exhibit on a document in the
course of an inquiry or trial before the court does not necessarily
mean the document in question has been proved in accordance with

law. Whether or not the appropriate proof has been adduced is a question to be determined at the appropriate stage, as is the observation of the Metropolitan Magistrate in the order dated 14.11.2018 declining to entertain the request of the petitioner to examine an expert witness additionally in his evidence *vis-a-vis* the document described as Ex. RW1/C9 which came on record initially in the course of statement of the complainant as mark CW1/A but was so described (as an exhibit) during the cross-examination of the petitioner on 25.10.2018.

The counsel for the petitioner at this stage submits that he may be permitted to withdraw the present petition but for fair procedure and trial, he may be given an opportunity to move an application under Section 311 Cr. PC to recall the respondent (petitioner in the case under Domestic Violence Act) for further cross-examination *vis-a-vis* the genuineness of the aforementioned document in as much he was deprived of such opportunity at the earlier stage for the reason the mobile phone instrument containing the message of which the document purports to be a transcript was never shown earlier to the court.

The request of the petitioner being fair, this court deems it appropriate to permit such opportunity for such application to be moved, of course, decision thereupon being the subject matter presently of the wisdom and judicial discretion of the concerned criminal court. It has, however, also been pointed out by the petitioner that the main case is listed before the Metropolitan

Magistrate for hearing of final arguments today. Given the above facts and circumstances, it is desirable that the Metropolitan Magistrate defers the hearing of the final arguments and pronouncement of the final order till decision is taken on the application in above nature as is proposed to be moved by the petitioner. In order that such opportunity, as is deemed proper, to be granted is not abused so as to cause delay, it is clarified that the petitioner will be entitled to present the same before the Metropolitan Magistrate within only a week hereof, failing which the opportunity would stand exhausted.

The main petition CrI.M.C.6361/2018 challenging the proceedings recorded on 25.10.2018 and the order dated 14.11.2018 of the Metropolitan Magistrate and the order dated 29.11.2018 of the revisional court is dismissed as withdrawn. The Metropolitan Magistrate, however, is directed to defer hearing of the final arguments and pronouncement of final order by adjourning the matter to an appropriate date. The petitioner, as aforesaid, may present the application in above nature within a week hereof. Further proceedings will be held, as per law, by the Metropolitan Magistrate, after adjudication upon such application if moved within such time as is granted.

This disposes of the petition and the application filed therewith.

Dasti under the signatures of the Court Master.

R.K.GAUBA, J.

JANUARY 11, 2019/Yg
CRL.M.C. 6361/2018

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