

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

Date of Order: March 15, 2019

+ **CRL.M.C. 5264/2017 & CRL.M.A. 20677-20678/2017**

AKHAND PRATAP SINGHPetitioner
Through: Mr. V.Madhukar and Mr. Pramod
Kumar Singh, Advocates

versus

CBIRespondent
Through: Mr. Narender Mann, Special
Public Prosecutor

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Trial court vide impugned order of 24th October, 2017 rejects petitioner's application raising issue of maintainability and continuance of trial, by relying upon Section 6 of the Delhi Special Police Establishment Act, 1946 (*hereinafter referred to as DSPE Act*).
2. Learned counsel for petitioner draws the attention of this Court to Supreme Court's order of 1st July, 2016 (*Annexure P-19*) to point out that Supreme Court had given liberty to petitioner to take all defences, as may be available to him in law, in the course of trial. It is submitted that rejection of petitioner's application by trial court being not maintainable, runs counter to Supreme Court's order of 1st July, 2016. It is submitted that respondent has to get more than 50 witnesses examined and because

the trial is vitiated, so subjecting petitioner to the agony of trial would not be in the interest of justice.

3. On the contrary, Special Public Prosecutor for respondent-CBI submits that plea of maintainability by resort to Section 6 of DSPE Act, 1946 was taken by petitioner at the charge stage and the said plea has been negated by this Court as well as by Supreme Court, as Special Leave Petition has been dismissed vide order of 1st July, 2016 and so, petitioner cannot urge this plea again amidst trial.

4. Upon hearing and on perusal of impugned order, Supreme Court's order of 1st July, 2016 and the material on record, I find that petitioner's plea regarding discontinuance of trial against him has been already negated by this court as well as Supreme Court at the charge stage. However, liberty had been granted to petitioner by Supreme Court vide order of 1st July, 2016, to take all defences, as may be available to him in law, in the course of trial. Though the plea of discontinuance of trial by resort to Section 6 of DSPE Act, 1946 has been already negated at the charge stage, but petitioner is not precluded from raising it at the stage of final arguments. However, amidst trial such a plea is not required to be adjudicated. In this context, the trial court in impugned order has observed that petitioner's application is not maintainable at the stage of recording of evidence. Since, petitioner's plea to stall the trial on the basis of Section 6 of DSPE Act, 1946 has not found favour at the charge stage, therefore, such a plea cannot be raised and considered at the stage of recording of evidence.

5. Findings no illegality or infirmity in the impugned order of 24th

October, 2017, this petition is disposed of with liberty to petitioner to urge the plea based on Section 6 of DSPE Act, 1946 before the trial court at the stage of final arguments.

6. With aforesaid liberty, this petition and the applications are accordingly disposed of, while not commenting upon the merits of the aforesaid plea or the case.

(SUNIL GAUR)
JUDGE

MARCH 15, 2019

v

