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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 6304/2018 & CRL.M.A.49443/2018

SUBRATA BRAHMA

..... Petitioner

Through: Mr. Satish Aggarwala,
Advocate

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Ashish Dutta, APP
Respondent No.2 in person

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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09.01.2019

1. The petitioner has filed the present petition under Section 482 read with Section 483 of the Code of Criminal Procedure, 1973 for setting aside the order dated 25.10.2018 passed by the learned Additional Chief Metropolitan Magistrate, South-East, Saket Court, New Delhi.

2. Learned counsel for the petitioner submitted that the impugned order passed by the learned Additional Chief Metropolitan Magistrate is contrary to the record and facts. Learned counsel for the petitioner has drawn the attention of the Court to the application, dated 25.10.2018, by the petitioner titled "Application for Appropriate Orders", wherein, in para 4, it is stated that the counsel for the applicant would be unable to appear before the Court of the learned Additional Chief Metropolitan Magistrate before lunch as he is having matters before the Hon'ble Delhi High Court on 25.10.2018 and prayed

in the application that the matter may kindly be taken up after lunch on 25.10.2018 because of the non-availability of the main counsel during the pre-lunch session.

3. I have gone through the record and the proceedings pointed out to me by the learned counsel for the petitioner and the learned APP. I have also gone through the order of this Court, dated 28.8.2018 passed in CrI. M.C.3389/2018 between the same parties. While disposing of the said petition, the parties were directed to appear before the Trial Court on 1.9.2018 for the purposes of recording additional testimony of PW-1 and for cross-examination of PW-1. It was also clarified that no adjournment shall be granted to the petitioner on the said date for the purposes of cross-examination. However, as stated, thereafter the matter was taken up before the learned Metropolitan Magistrate on 1.9.2018, 4.9.2018, 5.9.2018, and 6.9.2018 and then before the learned Additional Chief Metropolitan Magistrate on 10.9.2018, 13.9.2018 and then on 25.10.2018, the learned Additional Chief Metropolitan Magistrate closed the right of the petitioner to cross-examine PW-1/respondent No.2, without going into the controversy and making any observations regarding the adjournments and the dates granted on 1.9.2018, 4.9.2018, 5.9.2018, 6.9.2018, 10.9.2018 and 13.9.2018. It is a fact that, on 25.10.2018, when the matter was taken up by the Additional Chief Metropolitan Magistrate for the purposes of cross-examination of PW-

1/respondent No.2, an application was moved by the petitioner before the Additional Chief Metropolitan Magistrate that the matter may be taken up in the post-lunch session since learned counsel for the petitioner was not available during pre-lunch session. However, the Additional Chief Metropolitan Magistrate did not consider this plea and did not give any reasons whether she was ready to accommodate learned counsel for the petitioner or not and without disclosing any reasons, closed the cross-examination of PW-1.

4. Learned APP submitted that just to cut short the delay and in the interest of justice, the impugned order may be set aside and the petition may be allowed, subject to heavy costs. In view of the submissions, in the interest of justice and the cause submitted in the application dated 25.10.2018, the impugned order dated 25.10.2018 is set aside, subject to deposit of Rs.5,000/- with the Delhi Police Martyrs' Fund, Account No.18200110036907, UCO Bank, IFSC Code:UCBA0001820 within one week and the receipt thereof should be filed by the petitioner with the Trial Court.

5. It is pointed out by learned counsel for the petitioner and respondent No.2 that the application for transfer of the matter from the Court of learned Additional Chief Metropolitan Magistrate stands allowed by the learned District Judge of the concerned District and now the matter is pending before the Chief Metropolitan Magistrate, Saket, New Delhi on 2.3.2019.

6. Respondent No.2, present in the Court, submitted that she is going to the United States of America on 31.1.2019 and would not be able to come to India for about 5-6 months. Therefore, taking into consideration the concession granted to the petitioner as well as in the interest of the parties, the date 2.3.2019 fixed before the learned Chief Metropolitan Magistrate is cancelled and the learned Chief Metropolitan Magistrate is directed to take up the matter on 19.1.2019 at 2:30 pm.

7. Learned counsel for the petitioner submitted that he will conclude the cross-examination of respondent No.2 within one hour and in case the cross-examination is not concluded within one hour from the time it starts, the same may be closed immediately. It is clarified that no irrelevant question would be asked in the cross-examination. It is also clarified that no adjournment would be granted on any ground, whatsoever, to the petitioner for the cross-examination of PW-1.

8. The petition is disposed of in the above terms. The pending application is also disposed of. The parties are directed to appear before the learned Chief Metropolitan Magistrate on 19.1.2019 at 2:30 pm. The learned Chief Metropolitan Magistrate is directed to take up the matter and conduct the trial.

CHANDER SHEKHAR, J

JANUARY 09, 2019

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