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

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+ CRL.M.C. 1449/2024 & CRL.M.A. 5712/2024

M/S VAISHALI PUBLICITY PVT LTD & ANR. Petitioners
Through: Mr. A Mishra, Mr. Sahil and Mr.
Nidish Gupta, Advocates.

versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr. Digam Singh Dagar, APP for
State.
Ms. Vandana and Mr. Kapil Dua, Advocates for
R-2.

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+ CRL.M.C. 1517/2024, CRL.M.A. 5938-39/2024

M/S VAISHALI PUBLICITY PVT LTD & ANR. Petitioners
Through: Mr. A Mishra, Mr. Sahil and Mr.
Nidish Gupta, Advocates.

versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr. Digam Singh Dagar, APP for
State with SI Narender Singh, PS Chandni Mahal.
Ms. Vandana and Mr. Kapil Dua, Advocates for
R-2.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

ORDER
29.02.2024

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1. CRL.M.C. 1449/2024 has been filed under Section 482 Cr.P.C. seeking quashing of the order dated 29.01.2024 passed by the learned MM, Saket, Delhi in Complaint Case No. 2262/2020 titled 'M/S Ogaan Media



Pvt. Ltd. v. M/S Vaishali Publicity Pvt. Ltd. and Anr. '. CRL.M.C. 1517/2024 has been filed under Section 482 Cr.P.C. seeking quashing of the order dated 29.01.2024 passed by the learned MM, Saket, Delhi in Complaint Case No. 2260/2020 titled '*M/S Ogaan Media Pvt. Ltd. v. M/S Vaishali Publicity Pvt. Ltd. and Anr.* '. By the impugned orders both dated 29.01.2024, right of the Accused/Petitioners herein to cross-examine the Complainant was closed. Perusal of the impugned orders shows that the reason for closing the right of the Petitioners was their request for adjournment on the ground that the arguing counsel was not available despite having been granted last and final opportunity to cross-examine by order dated 05.12.2023.

2. Learned counsel for the Petitioners submits that it is a settled proposition of law that parties should not suffer for the acts and omissions of their counsel. The counsel was held up in this Court on 29.01.2024 and request was made only for a passover and not adjournment. Order sheets would indicate that Petitioners were not solely responsible for the matters being adjourned from time to time. On receipt of summons, Petitioners had entered appearance and notice under Section 251 Cr.P.C. was framed on 02.02.2023, adjourning the matters to 06.03.2023 for Complainant's evidence. On 06.03.2023, the Authorized Representative ('AR') of the Complainant sought adjournment on the ground of non-availability of the counsel. On the adjourned date, i.e. 27.03.2023 again, Complainant's AR was not present, hence joint adjournment was sought by the parties. The cases were adjourned to 18.04.2023, on which date parties were referred for mediation, which continued until August, 2023. Failure of mediation was brought to the notice of the Court on 04.09.2023. Matters were adjourned to 07.10.2023, on which date counsel for the Petitioners was unavailable and a



request for adjournment was made, which was allowed by the Trial Court, subject to cost of Rs.3,000/-. On 05.12.2023, adjournment was sought by the Complainant and not by the Petitioners as wrongly noted by the Trial Court. On 29.01.2024, matters were taken up at 12.30 pm and the counsel requested the Trial Court to pass over the matters as the arguing counsel was before this Court and the details of the case listed in this Court before the Division Bench were also given to the Trial Court. Instead of passing over the matters, the Trial Court erroneously closed the right to cross-examine the Complainant on a premise that last and final opportunity was given on 05.12.2023, which is factually incorrect.

3. Learned counsel argues that the record of the Trial Court does not support the finding of the Court that Petitioners have delayed the proceedings. Moreover, the Trial Court has failed to appreciate that cross-examination is an important right and it is only through this process that Petitioners will be able to establish their case and prove their innocence. Right to cross-examine available to an accused in a proceeding under Section 138 of Negotiable Instruments Act, 1881 is embedded in Article 22(1) of the Constitution of India and if the impugned orders are not set aside, grave prejudice would be caused to the Petitioners for no fault of theirs. In fact, as soon as the Petitioners learnt that the right to cross-examine had been closed, the matter was mentioned by the counsel but the Trial Court refused to entertain the mentioning.

4. Learned counsel for Respondent No.2/Complainant objects to the present petitions being allowed and urges that it is incorrect for the Petitioners to state that the matters were taken up by the learned Trial Court at 12:30 p.m. on 29.01.2024. In fact, the matters had been called twice



earlier in the day and this was the third call of the matters. Petitioners deliberately chose to stay away from the proceedings to delay and prolong the trial and Courts must not grant relief to litigants, who are not diligent in prosecuting their matters.

5. I have heard learned counsels for the parties and examined their rival contentions.

6. This Court has perused the order sheets of the Trial Court placed on record and finds merit in the contentions of the Petitioners to the extent that they cannot be held solely responsible for the matters being adjourned from time to time. Complainant has been taking adjournments on some occasions and as rightly stated by the counsel for the Petitioners that the matters were pending before the learned Mediator between 18.04.2023 to 04.09.2023. Order dated 05.12.2023, which forms the fulcrum of the impugned orders, shows that adjournment was sought on the said date by the Complainant as the younger brother of CW-1 had expired on 15.11.2023. No doubt, last and final opportunity was granted by the Trial Court but this was on the Complainant's request and not by the Petitioners. As far as the impugned orders are concerned, while Petitioners contend that a passover was sought and not an adjournment, Respondent contends to the contrary. There is also a dispute as to whether the matters were called for the first time or the third time at 12.30 pm.

7. There can be no dispute on the legal proposition that right of an accused to cross-examine the Complainant is a valuable right. The rule of putting the accused version in cross-examination is a rule of justice and not a mere formality or a technicality, as held by the Supreme Court in *Muddasani Venkata Narsaiah (DEAD) through legal representatives v.*



Muddasani Sarojana, (2016) 12 SCC 288. It is settled that the effect of non cross-examination is that the statement of the witness remains undisputed and unrebutted and causes prejudice to the accused. It is equally settled that a party which is not vigilant in prosecuting its case must not be granted any concession by the Court. Having perused the order sheets, this Court is not able to come to a conclusion that Petitioners have not been diligent in defending the matters. Adjournments before the Trial Court are a result of contributory factors being adjournments sought by the Complainant due to non-availability of the authorized representative/counsel and the matters being referred for mediation.

8. In these facts and circumstances, this Court is of the view that Petitioners are deserving of one last opportunity to cross-examine the Complainant. Court is apprised that the next date before the Trial Court is 04.03.2024. Trial Court is requested to defer the date of 04.03.2024 and adjourn the matters to a short date, summoning the Complainant's witness for cross-examination by the Petitioners. It is made clear that if the Petitioners do not avail of this opportunity on the date fixed by the Trial Court, no further opportunity shall be given by the Trial Court.

9. Petitions are allowed alongwith pending applications, subject to the Petitioners paying a sum of Rs.30,000/- to Respondent No.2 on 04.03.2024 before the Trial Court and proof of payment shall be deposited with the Trial Court.

10. Petitions are disposed of in the aforesaid terms.

JYOTI SINGH, J

FEBRUARY 29, 2024/pa/ka