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

+ **CRL.M.C. 1789/2024 & CRL.M.A. 6828/2024 (Stay)**

YOGENDER SHARMA

..... Petitioner

Through: Mr. Varun Singh and Mr. Janmejy
Pratap Singh, Advocates.

versus

RATTAN LAL

..... Respondent

Through: Appearance not given.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

02.04.2024

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1. The present petition under Article 227 of the Constitution of India read with Section 482 of the CrPC seeks following prayers:-

“In the aforementioned facts and circumstances of this case, it is most respectfully prayed that this Hon’ble Court may graciously be pleased to:-

- a) allow the present petition and set aside / reverse the impugned order dated 16.01.2024 passed by Sh. Shashank Nandan Bhatt, Ld. M.M.- 06 (NI Act), South-west, Dwarka, in Ct. Cases No. 12701/2020 titled as “Rattan Lal vs. Yogender Singh”, and grant opportunity to the above - mentioned two witness to lead the defense evidence; AND/OR
- b) pass any other Order(s) deemed fit in the interests of justice and equity.”

2. Learned counsel appearing on behalf of the petitioner submits that *vide* the impugned order dated 16.01.2024, the learned Trial Court has closed the opportunity for the petitioner to lead the defence evidence in CC No. 12701/2020, titled as ‘Rattan Lal v. Yogender Sharma’, under Section 138 of the NI Act filed by the present respondent. It is pointed out that prior to the said date, i.e., 11.12.2023, the lawyers were abstaining from the work and therefore the matter was notified for the aforesaid date, i.e., 16.01.2024.



It is submitted that prior to that the accused had been appearing before the learned Trial Court. It is further submitted that the accused had been examined and discharged in pursuance of his application under Section 315 of the CrPC. It is submitted that a list of witnesses was submitted which was composed of 3 witnesses out of which one witness, namely Virender Sharma was examined in chief and cross-examined on the previous date of hearing, i.e., 02.12.2023. Learned counsel appearing on behalf of the petitioner submits that other two witnesses are yet to be examined, however, the opportunity of the same has been declined.

3. *Per contra*, learned counsel appearing on behalf of the respondent submits that the present complaint has been pending since 2015 and the conduct of the petitioner throughout the course of the trial has been to delay the same. It is pointed out that on previous occasions, coercive steps had to be taken by the learned Trial Court to ensure the presence of the petitioner to proceed with the trial.

4. Learned counsel appearing on behalf of the petitioner handed up in Court today order sheets with respect to the present complaint case.

5. Heard learned counsel for the parties and perused the record.

6. Perusal of the record reflects that the present case was fixed for defence evidence *vide* order dated 22.01.2023. Perusal of the said order reflects that the petitioner was directed to file a list of witnesses within 7 days and also, liberty was granted to move an application under Section 315 of the CrPC in case he wants to examine himself as a defence evidence and the matter was listed for 10.02.2023. The order sheet of 10.02.2023 has not been placed on record. However, the order sheet dated 13.03.2023 reflects that the petitioner did not comply with the order dated 22.01.2023 but, he



moved an application under Section 315 of the CrPC on the said date of hearing. Further order sheet dated 17.04.2023 reflects that an adjournment was sought on behalf of the accused on the ground that his main counsel was not available and the same was permitted by observing that no further adjournment shall be given to the petitioner to lead defence evidence. On the next date of hearing, i.e., 08.05.2023, the accused again sought adjournment and did not lead any defence evidence. Thereafter on 03.07.2023, the petitioner examined himself as DW-1. Further *vide* order dated 14.09.2023, again one final opportunity was given to the petitioner to lead the defence evidence. Thereafter on 25.09.2023, again the matter was listed for defence evidence and list of witnesses was filed, whereupon the accused sought further time to produce his witnesses. On the next date of hearing, i.e., 21.11.2023, the accused again sought adjournment and did not produce his witnesses. On the next date of hearing, i.e., 02.12.2023, the petitioner examined DW-2 who was examined and discharged. It was further observed in the said order that the matter was pending for defence evidence since 10.02.2023 and despite several opportunities the petitioner was not completing his defence evidence. As noted above, on the next date of hearing, i.e., 11.12.2023, the lawyers were abstaining from work and the matter was listed for 16.01.2024 when the opportunity of the present petitioner to lead his defence evidence was closed.

7. After perusing the records, this Court is of the opinion that *vide* the impugned order the learned Metropolitan Magistrate has correctly observed that despite several opportunities the petitioner was not completing his defence evidence and on the previous date of hearing, i.e., 02.12.2023 one last and final opportunity was given to the accused to lead his evidence,



however, no defence evidence was produced.

8. Be that as it may, in the interest of justice, this Court is of the considered opinion that one last and final opportunity be given to the petitioner, subject to a cost of Rs. 25,000/- to be paid to the respondent on the next date of hearing fixed before the learned Trial Court, to lead his defence evidence which now comprises of 2 witnesses, namely, Mr. Deep Narayan Sharma and Mr. Vikram Kumar. The said witnesses shall be produced by the petitioner before the learned Trial Court on the date of hearing fixed with the consent of parties. It is further directed that no further adjournment shall be given with respect to examination of the aforesaid witnesses.

9. The present petition is allowed and disposed of accordingly.

10. Pending application(s), if any, also stand disposed of.

11. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

AMIT SHARMA, J

APRIL 02, 2024/sn

Click here to check corrigendum, if any