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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 2804/2023**

SAPNA KHANNA Petitioner

Through: Mr.Shobit, Advocate

versus

STATE, NCT OF DELHI Respondent

Through: Mr. Nawal Kishore Jha, APP for State

CRL.M.C. 2961/2023

SAPNA KHANNA Petitioner

Through: Mr.Shobit, Advocate

versus

DEEPAK SHARMA Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

15.05.2024

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1. At the outset, it is noted that the respondent/*Deepak Sharma* was duly served and was represented through his counsel on previous dates, however, neither any reply has been filed nor is there any appearance on his behalf today.
2. The present petitions relate to the proceedings initiated under Section 138 of the N.I. Act by the respondent against the petitioner. Since the parties as well as the issue raised are common, both the petitions are disposed of by this common order.
3. The petitioner seeks to assail the order dated 01.04.2023 passed the



Trial Court whereby petitioner's application under Section 311 Cr.P.C. came to be dismissed.

4. The impugned order records that the petitioner had failed to avail the various opportunities granted for cross-examination of the respondent/complainant and consequently, her right to cross-examine the complainant was closed.

5. Learned counsel for the petitioner submits that the cross-examination could not be carried as petitioner's sons were arrested in an FIR and that she was under depression and could not give proper instructions to her counsel. It is also informed that presently the matter is at the stage of recording the statement of the accused. Learned counsel further submits that the complainant has not been cross-examined at all in trial and denial of opportunity for cross-examination would have an adverse impact on the petitioner's defence. He thus prays that the petitioner may be given one opportunity to cross-examine the complainant and undertakes that no adjournment would be sought on that day.

6. Fair trial is the hallmark of criminal procedure. It entails not only the rights of the victims but also the interest of the accused and the society. It is the duty of the criminal court to ensure that fair and proper opportunity is granted to the accused to adduce evidence in his defence, for the just decision of the case. Such adducing of evidence by the accused is a valuable right. In Natasha Singh v. CBI reported as **(2013) 5 SCC 741**, the Supreme Court has observed:-

“16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial



includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardised. Adducing evidence in support of the defence is a valuable right. Denial of such a right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same."

7. Considering the submissions made hereinabove on behalf of the petitioner as well as the present stage of the trial, the present petitions are allowed subject to payment of cost of Rs.5,000/- in each case to the complainant within a period of four weeks from today. The Trial Court shall recall the complainant only for one date on which date, the cross-examination be carried out. In case the same is not carried out, the right to cross-examine shall be closed.

8. In view of the above, the present petitions are disposed of.

MANOJ KUMAR OHRI, J

MAY 15, 2024

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