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

+ **CRL.M.C. 3882/2023**

VIJAY KUMAR.

..... Petitioner

Through: Mr. Prabhankar Srivastava, Adv.

versus

NEERU MUNOT

..... Respondent

Through: Mr. Sarthak K., Adv.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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21.08.2024

CRL.M.A. 24916/2024 (early hearing)

1. For the reasons mentioned in the application, it is allowed and with the consent of parties, the petition is taken up for hearing today itself.
2. The already scheduled date of 12.11.2024 stands cancelled.

CRL.M.C. 3882/2023

1. By way of present petition, the petitioner seeks to assail the order dated 26.03.2022 and 13.07.2022 passed by learned MM NI Act-01/Central District, Tis Hazari Courts, New Delhi.
2. Learned counsel for the petitioner fairly submits that although vide the impugned order dated 13.07.2022 both attachment warrants were issued against the petitioner as well as his application under section 311 Cr.P.C. was rejected, he is only seeking relief as to the second aspect. He further submits that though the cross examination of the complainant was first fixed for 01.05.2021, however due to the Covid pandemic and technical problems the cross examination couldn't be conducted. Afterwards the matter was sent for mediation and the cross examination was delayed on that account. He



further submits that on 26.03.2022 the proxy counsel of the petitioner had sought a short accommodation for one week on the ground that main counsel of the petitioner was ill, and in this regard, medical documents were also sought to be placed on record. The Judicial Magistrate neither recorded this submission of the petitioner nor took the medical documents on record. Since the right to cross-examine the complainant was closed vide order dated 26.03.2022, the application filed under Section 311 Cr.P.C also came to be dismissed vide impugned order dated 13.07.2022. The revision preferred by the petitioner against the order dated 13.07.2022 was dismissed by the Principal District and Sessions Judge on 25.01.2023, holding that since the order was an interlocutory one, the same was not amenable to revisional jurisdiction.

3. Learned counsel for the respondent has vehemently opposed the petition and submits that the impugned orders do not suffer from any infirmity and the petitioner has been unnecessarily delaying the proceedings.

4. I have heard learned counsel for the parties and gone through the record.

5. 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 defense, 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 jeopardized. 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."

6. Considering the fact that the respondent has not been cross-examined at all, denial of the same would greatly prejudice the petitioner. For the explanation tendered for failing to cross-examine and in the interest of justice, this Court is inclined to allow the present petition and grant only one opportunity to the petitioner to carry out the cross-examination however, the same shall be subject to the payment of the cost of Rs.10,000/- to be paid to the respondent within four weeks from today. The trial court shall summon the said witness only for one date and the cross-examination shall be carried out on the same date. In case for any reason, cross-examination is not carried on the said date, the right to carry out the same shall stand closed.

7. In view of the above, the petition is disposed of along with the pending applications.

8. A copy of this order be communicated to the concerned trial court for information.

MANOJ KUMAR OHRI, J

August 21, 2024/akc