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

+ **CRL.M.C. 3975/2024 & CRL.M.A. 15145/2024**

LALAN KUMAR AND ANR

..... Petitioners

Through: Mr. Rakesh Kumar Sharma, Mr.
Bhagwat Prasad, Ms. Ayushi Sharma
and Mr. Navin Kumari, Advocates.

versus

THE STATE NCT OF DELHI AND ANR

..... Respondents

Through: Mr. Nawal Kishore Jha, APP for State
with Inspector Sahiram PS Vasant
Vihar, New Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

16.05.2024

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1. By way of present petition filed under Section 482 Cr.P.C, the petitioners seek to assail the order dated 07.05.2024 passed by learned MM, Patiala House Courts, New Delhi in the proceedings arising out of FIR No.58/2008 registered at PS Vasant Vihar, New Delhi.

2. Learned counsel for the petitioners states that vide aforesaid order, petitioners' right to cross examine PW-1 has been closed. He submits that during the pendency of trial, the petitioners had sought recall of PW-1 and PW-8 and in this regard, preferred an application, which came to be dismissed vide order dated 21.11.2019 by the learned Trial Court. The said order was assailed before this Court by way of CRL. M.C.544/2020, which



came to be disposed of on 31.01.2020, with liberty to the petitioners to cross examine the said witnesses on one date to be fixed by the Trial Court.

He submits that thereafter the matter could not be effectively taken up for cross examination. He states that the petitioners were represented before the Trial Court by a counsel appointed by DLSA. He states that PW-1 (B.M. Dua) was summoned, however, on the said date petitioners' counsel could not conduct the cross examination, as his empanelment with DLSA had already come to an end. It is also stated that a new counsel has been appointed by DLSA to represent the petitioners in the trial.

3. Issue notice.

4. Learned APP for the State accepts notice and states that the trial has not progressed since 2020.

5. Further, during the course of hearing, learned counsel for the petitioners has also handed over internet generated copies of daily orders, which indicate that adjournments have also been granted on account of absence of the accused, who is stated to be 100% disabled.

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 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."

7. Considering the fact that this Court had already considered the petitioners' request to cross examine PW-1 and PW-8, who for one reason or the other could not be cross examined till date, one last and final opportunity is granted to the petitioners to only cross examine PW-1 as PW-8 is stated to have already expired.

Learned counsel for the petitioners states that as and when the said witness is recalled, the petitioners will not seek an adjournment. It is made clear that if the petitioners fail to avail the said opportunity to cross-examine PW-1, no more opportunity will be granted in this regard.

8. The petition is disposed of in above terms along with pending application.

9. A copy of this order be communicated to the learned Trial Court.

MANOJ KUMAR OHRI, J

MAY 16, 2024/rd