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

+ **CRL.M.C. 4976/2024**

OMAR ABDULLAH

.....Petitioner

Through: Ms.Malavika Rajkotia, Mr. Ramakant
Sharma, Mr. Ravi Avasthi and
Mr. Prateek Avasthi, Advocates.

versus

PAYAL ABDULLAH

.....Respondent

Through: Mr. Prosenjeet Banerjee, Ms.Shreya
Singhal, Mr.Sarthak Bhardwaj, Ms.
Anshika Sharma and Ms.Mhasilenvo
Keditsu, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

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18.07.2024

CRL.M.A. 19028/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.M.C. 4976/2024 & CRL.M.A. 19029/2024

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner for setting aside the order dated 30.03.2024 passed by learned Judge, Family Court, Patiala House, New Delhi, whereby the right of the petitioner to lead evidence (RE) was closed by the learned Trial Court. Also, an application under Section 482 Cr.P.C. has been filed by the petitioner for stay of the proceedings.
2. Issue notice. Learned counsel for respondent, who also appears in CRL.M.C. 2268/2024 between the same parties, wherein earlier orders



passed by learned Trial Court have been challenged, accepts notice.

3. In brief, CRL.M.C. 2268/2024 has been earlier preferred on behalf of petitioner challenging orders dated 09.08.2023 and 05.02.2024 passed by learned Judge, Family Court, Patiala House, New Delhi, whereby application under Section 311 Cr.P.C. seeking right to cross-examine the respondent and review application preferred on behalf of petitioner, were dismissed. Thereafter, impugned order dated 30.03.2024 has been passed by learned Trial Court closing the RE of the petitioner (Respondent in proceedings under Section 125 Cr.P.C. before the learned Trial Court).

4. Learned Senior counsel for the petitioner contends that since CRL.M.C. 2268/2024 challenging the earlier orders dated 09.08.2023 and 05.02.2024 passed by learned trial court has been separately allowed, the impugned order dated 30.03.2024 passed by learned trial court closing RE to be led by the petitioner also needs to be recalled. She points out that effective RE could not have been led in the proceedings before the learned Trial Court in the absence of cross-examination of the respondent wife. She also urges that since the petitioner was proposing to contest the upcoming elections of Lok Sabha from April to June 2024, the respondent's evidence could not be led on 30.03.2024.

5. On the other hand, learned counsel for the respondent opposes the petition and submits that RE could have been independently led despite closure of right of cross-examination of petitioner. He further submits that delay continues to be perpetuated by petitioner, since order dated 30.03.2024 passed by learned trial court was only challenged in July, 2024, though last and final opportunity had been granted by the learned trial court on 02.03.2024 prior to closing the respondent's evidence vide order dated



30.03.2024.

However, learned Senior counsel for the petitioner clarifies that steps for challenging the order dated 30.03.2024 were taken up in the month of May though the petition has been listed in July, 2024 on account of objections raised by the Registry.

6. Vide separate detailed order, CRL.M.C. 2268/2024 has been allowed, by this Court, whereby the order passed by learned Trial Court dismissing application under Section 311 Cr.P.C. for recalling respondent wife for cross-examination has been set aside. Further, petitioner has been granted an opportunity for recalling respondent for purpose of cross-examination. In the facts and circumstances, for the reasons explained by the petitioner reflecting the difficulty in leading RE due to ensuing Lok Sabha elections, this Court is of the considered opinion that fair opportunity needs to be granted to the petitioner to lead respondent evidence after completing cross-examination of respondent wife in first instance. For aforesaid reasons, order dated 30.03.2024 passed by learned trial court closing the RE, is set aside. Parties/respective counsels are directed to appear before the learned trial court on 31.07.2024 (i.e., date already fixed).

Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to learned trial court for information.

ANOOP KUMAR MENDIRATTA, J

JULY 18, 2024/v