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

+ **CRL.M.C. 5345/2024 & CRL.M.A. 20458/2024,**

MONIKA SHARMA

.....Petitioner

Through: Mr. Vikas Nagwan, Advocate *via*
video-conferencing.

versus

STATE (GOVT. OF NCT DELHI) & ANR.

.....Respondents

Through: Ms. Shubhi Gupta, APP for the State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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16.07.2024

CRL.M.A. 20459/2024 (exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

CRL.M.C. 5345/2024

By way of the present petition filed under section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.') read with Article 227 of the Constitution of India, the petitioner impugns order dated 20.04.2024 passed by the learned Additional Sessions Judge, Central District, Tis Hazari Courts, Delhi made in C. R. No. 448/2023, whereby the learned ASJ has upheld order dated 23.06.2023 passed by the learned Presiding Officer, Special Court (NI Act), Central, Tis Hazari Courts, Delhi and has closed the right of the petitioner/accused for *further* cross-examination of the complainant; and has also thereby closed the remaining complainant's evidence in the case.



2. Though the present petition has been filed under the provisions of the Cr.P.C., in the opinion of this court, on a plain reading of section 531(2)(a) of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), proceedings are to be "... ..*disposed of, continued, held or made...* ..." in accordance with the Cr.P.C. *only* in cases where ***such proceedings***, viz. "... ..*any appeal, application, trial, inquiry or investigation...* ...", was ***pending*** immediately before the date on which the BNSS came into force, *i.e.* 01.07.2024.
3. Since the present petition has been filed after 01.07.2024, in the opinion of this court, the present petition ought to have been filed under the BNSS. Be that as it may, in order to obviate any unnecessary delay, the present petition is treated as one under section 528 of the BNSS.
4. A perusal of the impugned order dated 20.04.2024 shows that the matter was pending for further cross-examination of the complainant since 19.09.2019; and the petitioner had time-and-again sought adjournments *inter-alia* on the ground that the petitioner's brother in-law had passed-away and that she was busy in his last rites and rituals.
5. As noted in the impugned order, as well as in order dated 23.06.2023 made by the learned Magistrate, no particulars of the person who had deceased nor the date of demise etc. were mentioned in the applications seeking adjournment.
6. Other things apart, there is no dispute that the matter had been pending for further cross-examination of the complainant since 19.09.2019. In this backdrop, in the impugned order the learned ASJ has observed as follows :



“6. On perusal of the Trial Court Record, I find that the revisionist was taking adjournment time and again on the one pretext or the other without any justifiable and plausible reasons just to delay the trial. To my mind, sufficient opportunities have already been afforded by the Ld. Trial Court to the revisionist for cross examination. Moreover, no copy of Death Certificate of brother-in-law is placed on record and even before this Court no death certificate has been placed on record except the information about the Bhog and Antim Ardas which was scheduled to be held on 04.06.2023 in which date of death is mentioned as 26.05.2023 almost one month prior from the impugned order dated 23.06.2023. On perusal of the application seeking exemption from personal appearance on behalf the accused, the relevant para no. 2 is as under:-

“That on the last date of hearing the court was informed about the demise of the brother-in-law of the accused. That the accused is out of town to attend the last rites and perform the rituals.”

“7. But on perusal of last date of ordersheet i.e. 06.04.2023 wherein nothing has been so recorded as pleaded in the above noted paragraph no.2 and the case was being simply adjourned “Lawyers are abstaining from work”. As such, the submissions in this regard found incorrect and misleading. Even otherwise No Death Certificate is placed on record at any point of time throughout the trial.”

(emphasis supplied)

7. It is for the foregoing reasons that the learned ASJ has upheld the order made by the learned Magistrate, closing the right of the petitioner to further cross-examine the complainant.
8. In view of what is recorded in the impugned order and the circumstance that further cross-examination of the complainant was admittedly pending since 19.09.2019, this court is of the view that no



ground is made-out for exercising the inherent powers of the court under section 528 of the BNSS.

9. The present petition is accordingly dismissed *in-limine*.
10. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JULY 16, 2024

V.Rawat