

\$~64



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

+ CRL.M.C. 7373/2024, CRL.M.A. 28121/2024 &
CRL.M.A. 28122/2024

ELIZABETH THANKACHEN & ORS.Petitioners
Through: Ms. Priyanka Khandelwal
& Ms. Sakshi Mehra,
Advocates.

versus

GIRISH CHAND UPADHYAYRespondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
18.09.2024

1. The present petition is filed challenging the order dated 03.09.2024 passed by the learned J.M.F.C., Karkardooma Courts, Delhi in CC No. 961/2022 under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**') titled *Girish Chandra Upadhyay vs. Elizabeth Thankachen & Ors.* (hereafter '**the impugned order**')
2. The learned Trial Court, by impugned order, dismissed the application filed by the petitioner under Section 353 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('**BNSS**') (erstwhile Section 315 of the CrPC) for examining the petitioner as a defence witness.
3. The learned Trial Court noted that the statement of the petitioner under Section 313 of the CrPC was recorded on 05.07.2023 and time was granted to the petitioner to file his list



of witnesses. It was also noted that the petitioner was duly represented by a counsel and that the list of witnesses was filed and was also taken on record. It was further noted that the examination of all the witnesses were allowed and the DE was concluded over a span of eight months and several hearings. The final arguments had also concluded when the present application was filed.

4. The learned Trial Court, therefore, dismissed the application holding that the same is not maintainable after the final arguments had concluded.

5. The learned counsel for the petitioner submits that an application under Section 315 of the CrPC can be filed at any stage.

6. She submits that there is no bar as regard to the maintainability of the application, and till such time, the trial has not concluded, the application can be maintained. Section 311 and 315 of the CrPC reads as under:

“311. Power to summon material witness, or examine person present.—Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

315. Accused person to be competent witness.—

(1) Any person accused of an offence before a criminal court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial: Provided that—

(a) he shall not be called as a witness except on his own request in writing;

(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.



(2) Any person against whom proceedings are instituted in any Criminal Court under Section 98, or Section 107, or Section 108, or Section 109, or Section 110, or under Chapter IX or under Part B, Part C or Part D of Chapter X, may offer himself as a witness in such proceedings:

Provided that in proceedings under Section 108, Section 109 or Section 110, the failure of such person to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against together with him at the same inquiry.”

7. It is not in dispute that the Court is competent to summon any witness or examine any person at any stage of any inquiry, trial or other proceeding under the CrPC, if it appears to be essential to the just decision of the case. Accused person is also competent to appear as a defence witness, give evidence on oath in defence of the charges made against him. Section 315 of the CrPC provides that the accused cannot be called as a witness except on his own request in writing. It further provides that the failure to give evidence does not give rise to any presumption against the accused.

8. It is true that no timeline is prescribed under the CrPC for filing such an application. However, as rightly noted by the learned Trial Court, the statement under Section 313 of the CrPC was recorded on 05.07.2023 and the list of witnesses were filed by the learned counsel for the petitioner on 07.08.2023, pursuant to which the defence evidence was conducted over a period of eight months.

9. The matter has also been finally heard by the learned Trial Court.

10. Undoubtedly, the accused has a right of fair trial and every opportunity ought to be granted. However, the same by no stretch of imagination could be treated as a trunk card to file an



application at any stage as rightly noted by the learned Trial Court. Once the final arguments have already been heard, the purpose of an application at that stage would only be to delay the trial especially when no reason has been put forth as to the prejudice caused to the petitioner if she is not permitted to appear as a defence witness.

11. Undisputedly, a number of witnesses have been examined by the petitioner in her defence and admittedly, the complainant was also cross-examined wherein specific suggestions had been put in regard to the defence of the petitioner.

12. In view of the above, this Court finds no infirmity in the impugned order.

13. The present petition is therefore dismissed.

AMIT MAHAJAN, J

SEPTEMBER 18, 2024

'Aman'