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

+ **CRL.M.C. 8006/2024**

RITU

.....Petitioner

Through: Mr.Yudhishter Sharma, Mr.Rajesh
Kumar Aggarwal, Mr.Manoj Kumar
and Mr.Gurshimran Singh Sodhi,
Advocates

versus

SUNIL KUMAR

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

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09.10.2024

CRL.M.A. 30558/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.M.C. 8006/2024 & CRL.M.A. 30557/2024

1. Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') has been preferred on behalf of the petitioner for setting aside orders dated 18.10.2022 and 30.08.2024 passed by MM-01 (NI Act), West District, Tis Hazari Courts, Delhi, in proceedings under Section 138 NI Act.

2. Perusal of the order dated 18.10.2022 reveals that matter was listed before the learned trial court since 04.03.2021 for the purpose of cross-examination of complainant. However, after seeking exemption on 26.10.2021, petitioner failed to appear on 21.12.2021, 07.02.2022,



30.05.2022 and 23.08.2022, NBWs directed to be issued against the petitioner were received back with report that accused had left the given address three years back. Further, since particulars of petitioner were unavailable, proceedings under Section 82 Cr.P.C. were initiated against him and right to cross-examine was closed.

However, vide subsequent order dated 07.07.2023, taking a lenient view in the matter, petitioner was admitted to bail with respect to proceedings taken under Section 82/83 Cr.P.C. on appearance of petitioner. The matter was thereafter inadvertently fixed for CE and vide order dated 30.08.2024, learned trial court referred that the right of accused to cross-examine the complainant was already closed vide order dated 18.10.2022 and accordingly listed the case for recording of statement of accused under Section 313 Cr.P.C.

3. Aggrieved against aforesaid order, learned counsel for petitioner submits that petitioner was admitted to bail on appearance on 07.07.2023, since his non-appearance was not deliberate. He submits that accordingly, the right to cross-examine the complainant witnesses should have been restored and prays that impugned order dated 18.10.2022 as well as 30.08.2024 be set aside.

4. Admittedly, petitioner never challenged the order dated 18.10.2022 closing the right of cross-examination at any stage nor has filed explanation for recalling of witnesses. The present petition has been preferred belatedly, though the petitioner was well aware that his right to cross-examine the complainant stood closed by the learned trial court. Merely because the petitioner was admitted to bail, after initiation of proceedings under Section 82 Cr.P.C., does not lead to restoration of right of cross-examination, when



the same has not been challenged at relevant stage. The inadvertent fixing of case for CE under mistaken impression by the trial court, also does not come to the rescue of the petitioner. The proceedings under Section 138 NI Act cannot be permitted to be protracted on frivolous grounds when the accused fails to take necessary steps, for recalling of order, without reasonable explanation.

Considering the facts and circumstances of the case, no grounds are made out for interfering in the impugned order closing the right of cross-examination, as the petitioner repeatedly failed to appear before the learned trial court.

Petition is accordingly dismissed. Pending applications, if any, also stand dismissed.

ANOOP KUMAR MENDIRATTA, J

OCTOBER 9, 2024/v