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

+ **CRL.M.C. 8977/2024 & CRL. MA 34376/2024**

MOHSIN SHARIF

.....Petitioner

Through: Mr. Syed Mehdi Hussain, Mr. Dipesh
Choudhary and Mr Sachin Jangir,
Advocates

versus

**M/S HAMPSHIRE HOTELS
AND RESORTS PVT. LTD.**

.....Respondent

Through: Mr. Dinesh Sabhrawal, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

18.11.2024

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1. By way of present petition, the petitioner seeks setting aside of the order dated 25.09.2024 passed by the learned ASJ-05 (South) Saket Court, New Delhi in Crl. Rev. Petition 200/2024 titled 'Mohsin Sharif v. M/s Hampshire Hotels and Resorts Pvt. Ltd.' vide which the dismissal of his application under Section 311 Cr.P.C. by the learned JMFC was upheld.
2. Learned counsel for the petitioner/accused submits that though the complainant was cross examined in the year 2022, however certain material aspects including the factum of settlement being arrived at between the parties in context of the FIR No.90/2012 registered at PS EOW, New Delhi was left out. He submits that cross examination of the complainant on these vital aspects would have a bearing on the final outcome of the trial.
3. Learned counsel for the respondent/complainant on the other hand has



opposed the petition and contends that the order passed by the Judicial Magistrate was a well-reasoned order, which was rightly upheld by the Sessions Court. He submits that the complainant was cross-examined at length in the year 2022 whereafter statement of accused was also recorded and he examined himself as a defence witness. He submits that the present proceeding is nothing but an exercise in futility and intended to delay the trial.

4. The Courts have time and again set out the parameters of exercising powers under Section 311 Cr.P.C. A plain reading of Section 311 Cr.P.C. reflects that the same provides recourse to the section at any stage of the trial. Fair trial is the hallmark of criminal procedure. It is the duty of the criminal court to ensure that fair and proper opportunity is granted to the parties to adduce evidence for the just decision of the case. Such adducing of evidence is a valuable right. In regard to this, 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.”

5. Indeed, the petitioner is guilty of delay as the application under



Section 311 Cr.P.C. came to be filed on 24.01.2023 i.e. within six months of cross-examination of the complainant.

6. In view of the aforesaid, this Court is of the considered opinion that the respondent/complainant can be compensated by imposition of certain costs.

7. Learned counsel for the petitioner undertakes that the petitioner would seek only one opportunity to cross examine complainant and would not seek any adjournment in this regard.

8. It is informed that the trial is pending at the stage of defence evidence.

9. Bearing in mind the import of the decision of the Supreme Court in the abovementioned case, and considering the totality of the facts and circumstances of the case, the petition is allowed, subject to payment of costs of Rs.25,000/-, to be paid to the respondent. The Trial Court would summon the complainant for one date and would provide only one opportunity to the petitioner to cross examine the complainant. In case the petitioner fails to cross-examine the complainant, the opportunity granted to the petitioner would stand closed.

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

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

MANOJ KUMAR OHRI, J

NOVEMBER 18, 2024/rd