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

+ **CRL.M.C. 9063/2024**

RABIA KIDWAI

.....Petitioner

Through: Mr. Prashant Kumar, Mr. Sanjeev
Verma, Mr. Jitender Kumar Singh,
Ms. Nazia Parveen, Advs.

versus

THE STATE OF NCT OF DELHI & ANR.

.....Respondent

Through: Mr. Sunil Kumar Gautam, APP
Mr. Vikas Arora, Ms. Radhika Arora,
Mr. Vishal Chaudhary, Advs. for R2

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

20.11.2024

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CRL.M.A. 34748/2024

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 9063/2024 & CRL.M.A. 34747/2024

1. This is a petition filed under section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') seeking to set aside the order dated 26.09.2024 passed by Ld. JMFC (NI-Act), Saket Court, Delhi whereby the Ld. JMFC dismissed the application filed under Section 311 Code of Criminal Procedure, 1973 to recall CW1 for further cross-examination.
2. The facts are that respondent no.2 filed a complaint under section 138 Negotiable Instruments Act, 1881 against the petitioner wherein it was stated that respondent no. 2 had given a friendly loan of Rs 22 lakhs to the petitioner.
3. In order to repay the said loan, the petitioner issued 4 cheques, however the said cheques were dishonoured. Aggrieved respondent no. 2



filed a complaint under section 138 Negotiable Instruments Act, 1881.

4. Mr. Kumar, learned counsel for the petitioner states that the amount in question was deposited by respondent no.2 in a company account where the petitioner is a director and not in the personal account of the petitioner.

5. The said fact was concealed by respondent no. 2 and could not be verified earlier. Hence, the petitioner had filed an application under Section 311 Code of Criminal Procedure, 1973.

6. Issue notice. Mr. Gautam, learned APP accepts notice on behalf of respondent No. 1 and Mr. Arora, learned counsel accepts notice on behalf of respondent No. 2

7. Mr. Arora, learned counsel while denying all the averments states that without admitting any of the averments made in the petition, the petitioner maybe given one last and final opportunity to cross-examine CW1 subject to payment of costs.

8. Mr. Kumar, learned counsel for the petitioner has no objection to the said suggestion.

9. For the said reasons, the petition is allowed.

10. With consent of the parties, CW1 shall appear on 02.12.2024 before the appropriate court and will be cross-examined by the petitioner. No further opportunity will be given to the petitioner to cross examine CW1.

11. The petitioner shall also pay a sum of Rs. 35,000/- to the counsel for respondent No. 2 on 02.12.2024 as costs.

12. The petition is disposed of in aforesaid terms.

JASMEET SINGH, J

NOVEMBER 20, 2024/sp