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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P.(MAT.) 166/2024 & CRL.M.A. 38184/2024, CRL.M.A. 38225/2024**
ANIL BABBARPetitioner

Through: Ms. Juhi Arora, Advocate.

versus

UPASANA KAPOORRespondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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18.12.2024

CRL.M.A. 38185/2024 (exemption)

Exemption granted, subject to just exceptions.

The application stands disposed of.

CRL.REV.P.(MAT.) 166/2024

By way of the present petition filed under section 442 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner impugns judgment dated 02.09.2024 made by the learned Additional Sessions Judge-02, Special Judge (Narcotic Drugs and Psychotropic Substances) East District, Karkardooma Court, Delhi in Criminal Appeal No.78/2024.

2. By way of the said judgment, the learned Sessions Court has allowed the appeal impugning orders dated 28.09.2022 and 02.12.2022 passed by the learned Metropolitan Magistrate, Mahila Court-01, East District, Karkardooma Courts, Delhi, whereby the learned Magistrate had closed the respondent/wife's opportunity to lead petitioner's



evidence and an application seeking to re-open that opportunity had also been dismissed by the learned Magistrate.

3. Ms. Juhi Arora, learned counsel appearing for the petitioner/husband submits that the learned Sessions Court has erred in failing to appreciate that the respondent had been granted repeated opportunities to lead evidence in the matter and her opportunity to lead PE was closed *vide* order dated 28.09.2022 after having afforded to her several opportunities; and furthermore, her application seeking yet another opportunity to lead PE was also correctly rejected since the learned Magistrate found no justification why the wife had not filed evidence by way of affidavit in terms of earlier directions issued by that court.
4. To make good her submissions, learned counsel for the petitioner has taken the court through the impugned judgment dated 02.09.2024, and in particular, has drawn attention to paras 6 and 10 thereof, to argue that after summarising the repeated defaults on the part of the wife, including the fact that the appeal had itself been filed after a delay of 532 days, the learned Sessions Court *then proceeded not only to condone that delay but went on to grant to the wife yet another opportunity to lead evidence* with the following observations :

“17. In these peculiar circumstances of this case, this Court needs to balance the rights of both the parties without ignoring agonies suffered by the parties which often results in most of the cases of marital discord. The fact in these peculiar circumstances remains that the appellant due to her own laxity and intervening circumstances could not lead evidence in time and her right to lead evidence was closed by the learned Trial Court vide impugned



judgment dated 29.09.2022 and her application for recall of order dated 29.09.2022 was dismissed vide order dated 02.12.2022.

“18 . The Court, therefore, in these peculiar circumstances of this case, allows the present appeal and orders that the appellant be allowed to lead evidence on one single day to fixed by the learned Trial Court subject to cost of Rs.5,000/- to be deposited in DLSA. Appellant shall not be granted any further opportunity to lead evidence. The respondent will have right to cross-examine the complainant or any other witness.”

(emphasis supplied)

5. Upon being queried, learned counsel for the petitioner informs the court that after the passing of impugned judgment dated 02.09.2024, the matter was listed before the learned Magistrate on 05.12.2024, on which date the wife failed to pay the costs imposed; however she has filed her affidavit by way of evidence, though without serving a copy upon the petitioner. The next date of hearing before the learned Mahila Court is stated to be 05.03.2025.
6. After considering the submissions made on behalf of the petitioner, and also having due regard to the fact that the respondent has been remiss in leading her evidence before the learned Mahila Court, in the opinion of this court, the fair and just course of action in the matter would be to dispose-of the present petition at the stage of issuance of notice itself, with the following peremptory directions :
 - 6.1. The respondent shall pay costs of Rs.5,000/- imposed by way of the impugned order *positively* within 04 weeks from today, failing which the affidavit-in-evidence filed by her shall be struck-off the record of the learned Mahila Court;



- 6.2. On the next date of hearing before the learned Mahila Court *i.e.*, 05.03.2025, the respondent shall lead her evidence and submit herself for cross-examination *without fail and no further opportunity shall be granted for the purpose.*
7. The petition is disposed-of in the above terms.
8. Pending applications, if any, also stand disposed-of.
9. A copy of this order be sent by the Registry to the respondent *forthwith.*

ANUP JAIRAM BHAMBHANI, J

DECEMBER 18, 2024/ak