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

+ **CRL.M.C. 2027/2025, CRL.M.A. 9143-9144/2025**

PAWAN DHANPATRAI MALHOTRA

.....Petitioner

Through: **Ms. Shriya Chanda, Advocate.**

versus

MAHENDER KHARI

.....Respondent

Through: **Mr. Aditya Singh, Ms. Jyotsna
Agnihotri, Mr. Shitiz Agnihotri and
Mr. Kartikey Sharma, Advocates.**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

28.03.2025

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1. The present petition under Section 482 of Code of Criminal Procedure, 1973¹ and Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023², read with Article 226 of the Constitution of India, is directed against the order dated 5th March, 2025, passed by Principal District and Sessions Judge (South), Saket Courts, New Delhi. By the said order the Revisional Court dismissed Petitioner's challenge to the order dated 5th August, 2024, passed by the JMFC (NI Act)-01, South, Saket Courts, Delhi. By the order dated 5th August, 2024, the JMFC rejected the Petitioner's application under Section 165 of Indian Evidence Act, 1872³, resulting in the closure of the Petitioner's right to lead defence evidence.

¹ "Cr.P.C."

² "BNSS"

³ "Evidence Act"



2. Briefly stated, the facts of the case are as follows:

2.1. The Respondent instituted a complaint under Section 138 of the Negotiable Instruments Act, 1881⁴, which is presently pending before the Court of JMFC. During trial, the Petitioner partly cross-examined the Complainant's witness, but failed conclude the same. Consequently, on 20th March, 2023, Trial Court closed the Petitioner's right to further cross-examine the witness. Aggrieved, the Petitioner preferred a revision petition, which was allowed by the Revisional Court *vide* order dated 11th April, 2023, granting one final opportunity to cross-examine the witness, subject to payment of costs of INR 1,00,000/-. Although the cost was duly paid, the Petitioner did not avail the opportunity, resulting in the closure of his right for the second time on 1st May, 2023. Thereafter, the Petitioner approached this Court by way of Crl. M.C. 6753/2023, assailing the order dated 11th April, 2023, which too was dismissed by order dated 17th October, 2023.

2.2. The matter then proceeded to the next stage. The statement of the Petitioner under Section 313 Cr.P.C. was recorded on 27th October, 2023, wherein he expressed his intention to lead defence evidence. Pursuant thereto, on 16th December, 2023, the Petitioner filed an application seeking summoning of certain documents from the Complainant. This application was dismissed on 10th January, 2024, with the Trial Court observing that the Petitioner had failed to establish that the documents sought were in the possession of the Complainant. Nonetheless, one final opportunity was granted to the Petitioner to lead defence evidence on the next date of hearing.

2.3 However, despite several opportunities provided to the Petitioner , no



defence evidence, was led. Considering this fact, on 5th August, 2024 nearly 10 months later, after the recording of the Section 313 Cr.P.C. statement, the Trial Court passed the following order, closing the Petitioner's right to lead evidence:

“Matter is at the stage of DE.

As per the record, statement of the accused u/s 313 Cr.P.C was recorded on 27.10.2023 wherein accused has stated that he wish to lead DE. Record further reveals that since 27.10.2023 many opportunities have been given to the accused to lead DE. Further as per the record last opportunity to lead DE was granted by this Court firstly on 10.01.2024 thereafter on 06.02.2024 and thereafter on 01.05.2024. Despite aforesaid directions no DE has been led today on behalf of the accused. Further till today an application u/s 165 Indian Evidence Act has been filed on behalf of the accused requesting for summoning of the complainant alongwith certain documents and for examination of the complainant by this Court. Copy already supplied to Ld. Counsel for the complainant.

I have heard the arguments on the application and perused the record.

Needless to say that the present application has been filed primarily to delay the trial further and has no merit merits and is also misconceived as per settled law in respect of the matters pertaining 138 NI Act. Accordingly, application stands dismissed. Disposed off accordingly.

Since today as well it is submitted by the Ld. Counsel for the accused that DE cannot be led today on behalf of the accused for want of relevant documents, the opportunity to lead DE stands closed considering the conduct of the accused as demonstrate from the record.

Be put up for final arguments on 09.09.2024 at 2.30 pm.

Further, previous cost imposed which has not been paid and is directed to be paid by the accused and receipt be filed by the NDOH.”

[Emphasis supplied]

2.4. Aggrieved by the said order, the Petitioner filed a revision petition, which came to be dismissed by the Principal District and Sessions Judge (South) *vide* order dated 5th March, 2025. The Revisional Court upheld the findings of the Trial Court, holding that the opportunity had been rightly closed on account of the Petitioner's repeated defaults. The said order is now

⁴ “NI Act”



under challenge in the present proceedings.

3. Counsel for the Petitioner raises the following grounds to assail the impugned order:

3.1. The revisional Court has failed to take into consideration the conduct of the Complainant which contributed to the delay in the proceedings.

3.2. The Trial Court erred in closing the Petitioner's right to lead defence evidence while deciding the application under Section 165 of the Evidence Act. In cases arising under Section 138 of the NI Act, the law presumes the existence of a legally enforceable debt or liability once execution of the cheque is admitted. This presumption, operates in favour of the complainant and must be rebutted by the accused. It is urged that denial of an opportunity to lead defence evidence effectively deprives the Petitioner of the means to rebut the statutory presumption and thus amounts to a serious infraction of his right to a fair trial.

3.3 Both the Trial Court and the Revisional Court failed to appreciate the inconsistencies and contradictions in the Complainant's submissions and reply to the application under Section 165, which, according to the Petitioner, expose the *mala fides* in the Complainant's stance.

4. The Court has considered the aforementioned contentions of the Petitioner but finds the same to be devoid of merit. The record speaks for itself and reflects a consistent pattern of non-cooperation by the Petitioner. The repeated failure to avail opportunities extended by the Trial Court, despite the imposition and payment of substantial costs, clearly belies the Petitioner's contention of being denied a fair chance. The procedural timeline demonstrates that the Court granted ample latitude to the Petitioner, including the restoration of his right to cross-examine the Complainant, and



a final opportunity to lead defence evidence. Nevertheless, the Petitioner failed to utilise the liberty granted to him, choosing instead to delay the proceedings without any plausible justification. The contention that the Trial Court prematurely closed the right to lead defence evidence overlooks the fact that the Petitioner was given multiple specific dates for this purpose and yet made no effort to comply. Even the application filed under Section 165 of the Evidence Act was found to be a dilatory tactic lacking in substance, as noted by the Trial Court. There is no material on record to suggest that the Complainant caused any delay. On the contrary, it is the conduct of the Petitioner that has stalled the proceedings at various stages.

5. In light of the foregoing, the Court finds no merit in the present petition and the same is dismissed along with pending application(s).

SANJEEV NARULA, J

MARCH 28, 2025

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