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

+ CRL.M.C. 9748/2024 & CRL.M.A. 37370/2024

NEERAJ KUMAR SHARMA

.....Petitioner

Through: Mr. Anurag Jain, Advocate

versus

DIMPLE PARASHAR

.....Respondent

Through: Mr. Shram Vir Vats, Advocate

CORAM:

HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

ORDER

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24.04.2026

1. The present petition has been filed seeking quashing/setting aside of the order dated 24.10.2024 passed by the learned ASJ (SFTC), Dwarka Courts, New Delhi (hereafter '*Sessions Court*') in Crl. Rev. No. 2190/2024, whereby the order dated 08.08.2024 passed by the learned JMFC (NI Act-02), West District, Dwarka Courts, New Delhi (hereafter '*Trial Court*'), closing the right of the petitioner to lead defence evidence, was upheld in Ct. Case No. 5003726/2016, pertaining to the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereafter '*NI Act*').

2. A complaint under Section 138 of the NI Act was filed by the respondent before the learned Trial Court, wherein the petitioner herein was arrayed as accused no. 2, being the Director of accused no. 1, M/s Ecnon Residency Buildcon Pvt. Ltd. As per the record, the statement of accused no. 2/petitioner herein was recorded on 19.05.2022, while the statement of



accused no. 3, Kushal Rathi, was recorded on 13.04.2023. Accused no. 3 was examined and discharged as DW-1 on 30.05.2024. The accused no. 2/petitioner herein was examined as DW-2 on 10.08.2023, and the matter was thereafter deferred for his cross-examination. However, due to the repeated non-appearance of the petitioner, his right to lead defence evidence was closed *vide* order dated 08.08.2024. The said order was challenged before the learned Sessions Court by way of Crl. Rev. No. 2190/2024, and *vide* the impugned order dated 24.10.2024, the said revision petition was dismissed as being non-maintainable.

3. Aggrieved thereby, the petitioner has approached this Court.

4. The learned counsel appearing for the petitioner submits that the right of the petitioner to lead defence evidence has been closed by the learned Trial Court. He submits that it is essential for an accused, particularly in a case under Section 138 of the NI Act, to lead evidence in order to establish his defence. It is argued that the petitioner, as well as his counsel, were present before the learned Trial Court through video conferencing; however, the petitioner could not appear physically on account of his ill health. In support of the same, learned counsel draws the attention of this Court to Annexure D, i.e., the exemption application filed before the learned Trial Court, along with the medical documents of the petitioner. He further points out that DW-2 already stands examined, and only his cross-examination remains to be conducted. It is, therefore, prayed that one final opportunity be granted to the petitioner to lead defence evidence.

5. This Court has **heard** arguments addressed on behalf of the petitioner as well as the State, and has perused the record.



6. Considering the submissions addressed before this Court, as well as the fact that the examination of the petitioner as DW-2 has already been recorded and only his cross-examination remains to be conducted, this Court is of the opinion that one final opportunity can be granted to the petitioner in the interest of justice.

7. Section 311 Cr.P.C. confers wide powers upon the Court to summon, examine, recall, or re-examine any person at any stage of inquiry, trial, or other proceeding, if such evidence appears to be essential for the just decision of the case. Discussing the powers conferred upon the Courts under Section 311 Cr.P.C., the Hon'ble Apex Court in **Varsha Garg v. State of Madhya Pradesh: 2022 SCC OnLine SC 986**, has observed as under:

"31.This power can be exercised at any stage of any inquiry, trial or other proceeding under the CrPC. The latter part of Section 311 states that the Court "shall" summon and examine or recall and re-examine any such person "if his evidence appears to the Court to be essential to the just decision of the case". Section 311 contains a power upon the Court in broad terms. The statutory provision must be read purposively, to achieve the intent of the statute to aid in the discovery of truth.

36. The power of the court is not constrained by the closure of evidence. Therefore, it is amply clear from the above discussion that the broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory provision goes to emphasise that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest."

8. In view of the aforesaid principles, and considering that denial of an opportunity to complete the testimony of DW-2 may prejudice the defence



of the petitioner, this Court deems it appropriate to grant one single and final opportunity to the petitioner to appear and subject himself to cross-examination as DW-2.

9. However, considering that the petitioner had failed to appear on several dates before the learned Trial Court, resulting in delay in the proceedings, such indulgence cannot be granted without conditions.

10. Accordingly, the petitioner is granted one single opportunity to lead defence evidence and complete his cross-examination as DW-2, subject to payment of costs of ₹20,000/- to the complainant/respondent herein, prior to leading defence evidence. The said opportunity shall be availed on one date only, to be fixed by the learned Trial Court. No adjournment shall be granted to either side on the said date. In case the petitioner fails to avail the said opportunity, no further opportunity shall be granted, and the learned Trial Court shall proceed further in accordance with law.

11. The petition stands disposed of in the above terms.

12. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

13. The order be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

APRIL 24, 2026/vc/TD