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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 3923/2011

GULAB SINGH

..... Petitioner

Through: Mr. Amit Singh, Advocate with Mr.
Devendra Singh, Advocate.

versus

ANAND MAHESHWARI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

ORDER

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28.11.2011

This is a petition under Section 482 CrPC against the order dated 12.09.2011 of ASJ passed in Crl.Rev. No. 59/2011.

Vide the impugned order, the learned ASJ dismissed the revision petition against the order of MM dated 27.4.2011, whereby he dismissed the application under Section 91 CrPC of the petitioner in CC No. 1375/1/09.

The respondent herein had filed a petition under Section 138, N.I.Act against the petitioner for dishonour of cheque of Rs. 3 lakhs issued by him. Both the parties led their evidence in the said case and the matter was listed for final arguments before the learned M.M. It was at this stage that the application under Section 91 CrPC was filed by the petitioner, requesting for summoning of some of the bank accounts of the respondent. It was averred in the said application that the

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petitioner came to know that the bank account in which the cheque in question was deposited had been opened after the date mentioned in the cheque. It was also stated therein that the respondent had not shown the loan amount of Rs. 3 lakhs to the petitioner in the income tax returns for the relevant period and if that was so, then the amount has been repaid by the accused/petitioner immediately after the cheque given by the complainant/respondent has been encashed and thus, it was also prayed to summon the income tax returns of the respondent for the year 2002-2003.

I have heard counsel for the petitioner and perused the record.

It is noted that the respondent had filed a complaint against the petitioner under Section 138, N.I.Act in the year 2003 and that the case continued for about eight years and ultimately when the evidence of both the parties was closed and the matter was listed for final arguments, application under Section 91 CrPC was filed by the petitioner. The petitioner, in his statement under Section 313 CrPC recorded by the M.M. had denied issuance of the aforesaid cheque. However, in the application under reference, he stated that the cheque in dispute has been deposited in the account by the respondent and that the said account was opened by the respondent after the issuance of cheque. Both these stands are apparently contradictory. Further, if the amount of Rs. 3 lakhs was not shown loan in the income tax returns by the respondent, that was no ground to allege that no amount was payable by the petitioner. From this, no presumption could be raised that the said amount was paid in cash by the petitioner immediately after the cheque given

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by the complainant. The petitioner seems to be taking inconsistent stand inasmuch as on one hand, he denied having issued cheque and on the other hand, he stated that he had repaid the loan amount in cash. The learned M.M. rightly dismissed the said application and his order was rightly confirmed by the learned ASJ. Both the courts having recorded identical findings, I do not find any infirmity or perversity in their findings and do not see reason to interfere with their orders.

Petition has no merits. It is accordingly dismissed.


M.L. MEHTA, J

NOVEMBER 28, 2011

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