

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

Reserved on: 25th February, 2013

Pronounced on: 5th March, 2013

+ **CRL.M.C. 3410/2011**

SADIAQ HUSSAIN

..... Petitioner

Through: Mr. Randhir Jain, Adv. with
Mr. Dhananjai Jain, Adv.

versus

AKHAND BHARAT CHIT FUND PVT. LTD.

..... Respondent

Through: Mr. Rajat Mittal, Adv.

+ **CRL.M.C. 3455/2011**

MOHD.ASFAQ

..... Petitioner

Through: Mr. Randhir Jain, Adv. with
Mr. Dhananjai Jain, Adv.

versus

AKHAND BHARAT CHIT FUND PVT. LTD. Respondent

Through: Mr. Rajat Mittal, Adv.

+ **CRL.M.C. 3481/2011**

SADIQ HUSSAIN

..... Petitioner

Through: Mr. Randhir Jain, Adv. with
Mr. Dhananjai Jain, Adv.

versus

GEER AAR CHIT FUND PVT. LTD.

..... Respondent

Through: Mr. Rajat Mittal, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. In these three Petitions under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the Petitioner who is an accused in all the three Complaint Cases Nos.2274/2011, 2277/2011 and 2270/2011 before the learned Metropolitan Magistrate ('MM'), New Delhi seeks setting aside of the order dated 18.07.2011 whereby notice under Section 251 of the Cr.P.C. was served on the Petitioner and the order dated 19.09.2011 whereby the Petitioner's application for supply of the copy of the complaint and the documents filed with the Complaint was dismissed.
2. The Petitioner's grievance is that the Complaint was instituted before the Trial Court on 23.09.2009 and was presented before the learned 'MM' on 06.10.2009. On 30.08.2010, the Respondent (Complainant before the Trial Court) led its pre-summoning evidence and the Petitioner was directed to be issued summons for 21.02.2011. No steps were taken for issuance of the process for 21.02.2011. On 19.05.2011, the summons issued to the Petitioner for 18.07.2011 was returned back unserved. The Petitioner appeared before the learned 'MM' on 18.07.2011. The Petitioner requested the Trial Court to supply copy of the complaint and the documents filed by the Complainant, however, the same was not supplied and the learned 'MM' proceeded to issue a notice under Section 251 of the Cr.P.C. An application dated 17.09.2011 was moved by the Petitioner for supply of the copy of the complaint and complete set of documents and for recalling the order dated 18.07.2011 framing notice against the Petitioner. The application was, however, dismissed with costs of ₹500/-.
3. Learned counsel for the Petitioner urges that the order dated 18.07.2011 framing notice without supplying the copy of the complaint and the

documents filed with it was illegal. When the attention of the learned 'MM' was drawn with regard to the same by moving an Application, it was dismissed by an order dated 19.09.2011.

4. On the other hand, learned counsel for the Respondent supports the impugned orders.
5. I have perused the orders relied upon by the learned counsel for the Petitioner. It is true that in two of the Petitions (Crl.MC.3410/2011 and Crl.MC.3455/2011) the summons were returned back unserved and the same was ordered to be served afresh on 18.07.2011. In these two Petitions, the record does not show that the summons were served upon the Petitioner. However, in the third Petition (Crl.MC.3481/2011) the attested copy of the order dated 19.05.2011 placed on record by the Petitioner reveals that the summons were duly served and therefore, BWs in the sum of ₹2,000/- were ordered to be issued through the SHO concerned. The order further shows that the process fee was not filed by the Respondent, therefore, BWs could not have been issued against the Petitioner.
6. It is evident from the order dated 18.07.2011 passed in all the three Complaint cases that the Petitioner was directed to be admitted to bail on furnishing a Personal Bond in the sum of ₹10,000/- with one surety in the like amount. The notice under Section 251 Cr.P.C. was framed and the matter was listed for defence evidence in terms of the judgment of this Court in *Rajesh Agarwal v. State & Anr. (2010) 171 DLT 51*. The Petitioner was further given an opportunity to file an application under Section 145 (2) of the Negotiable Instruments Act, 1881 (the Act) if he wanted to cross-examine the complaint on the next date of hearing. The order dated 18.07.2011 clearly reveals that the Petitioner never informed

the Trial Court that (i) he had not received the process in the case; (ii) that he had appeared of his own on receiving information of filing of the complaint; or (iii) that the copy of the complaint and the documents may be supplied to him.

7. Thus, the Petitioner's averments in the instant Petitions that a request was made to the learned 'MM' for supply of the copy of the complaint and the documents is misconceived and is against the record.
8. It is true that an application dated 17.09.2011 was moved by the Petitioner for supply of the copy of the complaint and supporting documents and to recall framing of the notice under Section 251 Cr.P.C. Obviously, the learned 'MM' had no power to review framing of the notice in view of the judgment of the Supreme Court in *Adalat Prasad v. Rooplal Jindal & Ors.* (2004) 7 SCC 338, thus he dismissed the Application vide order dated 19.09.2011.
9. A perusal of the order reveals that the learned 'MM' again granted an opportunity to the Petitioner to move an application under Section 145(2) of the Act to disclose his defence so that his (Petitioner's) prayer for recalling the Complainant for the purpose of cross-examination may be considered.
10. In my view, even on the basis of *Adalat Prasad* nothing prevented the learned 'MM' to supply the copy of the complaint and list of witnesses to the Petitioner on checking the record whether the same has been received by him or not. Permitting supply of the copy of the complaint etc. will not amount to review of any order passed by the learned 'MM'. The learned 'MM' proceeded to decline the Petitioner's request simply on the ground that no such plea was taken by the Petitioner at the time the notice under Section 251 Cr.P.C. was framed against him. Since, at least in two cases

(Crl.MC.3410/2011 and Crl.MC.3455/2011) it is proved on record that the process was not served upon the Petitioner, he was entitled to be supplied with the copy of the complaint, list of witnesses and the documents relied upon by the Respondent. Since it is a disputed question whether the service was in fact effected in CC No.2270/2011, i.e. Crl.M.C.3481/2011, I would direct for supply of the copies of documents to the Petitioner in this case as well.

11. Since the question of non receipt of the Complaint and list of witnesses was not raised at the time of framing of notice under Section 251 Cr.P.C., I am not inclined to set aside the order dated 18.07.2011. The Petitioner is given another opportunity to make a request to the learned 'MM' within four weeks to cross examine the complainant, if not already made, which the learned 'MM' shall be entitled to decide on merits.
12. The Petitions are disposed of in above terms.
13. Pending Applications also stands disposed of.

(G.P. MITTAL)
JUDGE

MARCH 05, 2013

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