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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Order pronounced on 09.11.2022*

+ CRL.M.C. 2242/2022 & CRL.M.A. 9443/2022
ACHINT GUPTA Petitioner
Through: Mr. Nasir Aziz and Mr. Fuzail
Abbasi, Advocates.
versus
RADHEY SHYAM GOYAL Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. This is a petition filed by the petitioner under Section 482 Cr.P.C. for quashing / setting aside of order dated 13.04.2022 passed in CC No.519807/2016 passed by learned Metropolitan Magistrate Tis Hazari Court, Delhi, rejecting the application filed by the accused under Section 254(2) Cr.P.C. and putting up the matter for DE.

2. The prayer made in the petition is as under:-

“(a) To admit and allow the present Petition of the Petitioner and set aside the impugned order dated 13.04.2022 passed by Ms.Bhujali, MM, Central, Tis Hazari Courts, Delhi in CC NO 519807/ 2016 in case titled Radhey Shyam Goyal Vs Achint Gupta ,directing the Ld MM to allow the appearance of additional witnesses Mr.Abhay Kumar Jain, Mr. Jugal Kishor Aggarwal and Mr. Ajay Goenka, members of the committee and the then President respectively because the current President Sh.Sanjay Jain has failed to produce the desired record which is a must in the facts and circumstances of the case.”

3. Notice was issued. I have heard the learned counsel for the parties.

My considered view is as under:-

3.1 In the present matter, the respondent Radhay Shyam Goyal had filed a complaint under Section 138 Negotiable Instruments Act against the petitioner, which is pending trial before the learned Metropolitan Magistrate. The complaint is in respect of dishonour of cheque of Rs.25 lakhs, which is alleged to have been issued for refund of loans given by the present respondent. The said cheque bearing No. 190478 dated 22.02.2013 is stated to have been issued in the name of the present respondent for the sum of Rs.25 lakhs and assurance was given that the cheque would be honoured at the time of the presentation; however, the cheque was dishonoured on 28.02.2013 and the cheque returned memo states that “Payment stopped by the Drawer”.

3.2 Legal notice dated 20.03.2013 was served which was replied to by the present petitioner and a rejoinder dated 16.04.2013 was also sent by the Advocate of the respondent. Thereafter, the complaint was filed on 06.05.2013. Against an order dated 03.02.2021 passed by the learned Metropolitan Magistrate, the present petitioner had approached this Court by filing Crl.M.C.No. 924/2021 in which the following effective order was passed:-

“6. The learned Metropolitan Magistrate ought not to have closed the evidence and must have given an opportunity to the petitioner herein to file an appropriate application to compel the attendance of DW-3. The proceedings indicate that the petitioner has not delayed the matter unnecessarily. DW-3 who was to be examined on 03.02.2021 refused to appear. The petitioner ought to have been given one more opportunity to compel the attendance of DW-3. In the interest of justice one last opportunity is granted to the petitioner to take appropriate steps to

summon DW-3, subject the payment of cost of Rs.50,000/- to the petitioner herein.

7. *The petitioner is directed to take the requisite steps within two weeks from today. The Trial Court shall fix a short date for cross examination of DW-3 and no adjournments shall be granted to the petitioner under any circumstances.*

8. *Accordingly, the petition is disposed of along with the pending application.”*

3.3 In the meantime, the petitioner had moved an application under Section 254(2) Cr.P.C. praying that he may be allowed to examine the following three witnesses:-

1. Mr. Ajay Goenka, Ikki Saree Centre, 5871, 1st Floor, Jogiwara, Nai Sarak, Chandni Chowk, Delhi-110006, Whatsapp No. 9311111297

2. Mr. Jugal Kishore Agarwal, Kedar Nath Rattan Lal, 950, Maliwara, Nai Sarak, Chandni Chowk, Delhi-110006, Whatsapp No.9811116767

3. Mr.Abhay Jain, A.K. Textiles Distributor, 312, Naya Katra, Chandni Chowk, Delhi-110006, Whatsapp No. 9811132416

3.4 The said application was dismissed vide impugned order dated 13.04.2022, which is challenged before this Court. The said order is reproduced hereunder:-

*“Cost of Rs. 4,000/- is paid to the complainant by accused.
An application moved on behalf of accused u/s 254 (2) Cr.
PC is pending for disposal. Same is considered.
Submissions heard. File perused.
Section 254 (2) Cr. PC provides that the Magistrate may, if
he thinks fit, on the application of the prosecution or the*

accused issue a summons to any witness directing him to attend or to produce any document or other thing.

Perusal of file shows that earlier vide the list of witnesses provided on behalf of the accused, the accused sought to examine DW-3 Delhi Saree Mercantile association. Section 63 of Cr. PC provides that service of summons on corporate bodies and societies may be effected by serving it on the secretary, local manager or other principal officer. DW-3 has already been summoned through its principal officer, president Mr. Sanjay Jain at the behest of accused, who has been examined.

Perusal of file shows that the right of accused to lead DE was already closed vide order dated 03.02.2021, of this court. Thereafter, the accused approached the Hon'ble High court of Delhi seeking opportunity to examine DW-3 and the Hon'ble High court of Delhi was pleased to allow the opportunity to cross examine the DW-3 along with direction that no adjournment shall be granted under any circumstances. The witnesses sought to be examined by the accused i.e. the committee members Ajay Goenka, Abhay Kumar Jain & Jugal Kishore Aggarwal, were not mentioned in the list of witnesses, filed by the accused, nor such prayer was made to examine any other witnesses before the Hon'ble High court of Delhi and the Hon'ble High Court of Delhi had allowed the application of accused only to a limited extend to compel the attendance of DW-3 through the president Sanjay Jain and to examine him. Thus, in the facts & circumstances of present case, the application of accused stands rejected.

Be put up for DE on 23.05.2022.

3.5 If we go through the evidence of Sh. Sanjay Kumar Jain examined as DW-3, it discloses that he has not produced any document, being originals of exhibit DW-1/2, DW-1/4, DW-1/5 and DW-1/7. As per him, the said documents are not available in the office of Delhi Saree Mercantile Association and since he was the President of the Association only for the

last two years, so he has no knowledge regarding those documents and those documents may be with the then office bearers. He has no knowledge even about the case, in which he has been summoned as witness although he was treasurer of the Association at the relevant time. A panel of two members, namely, Sh. Abhay Kumar Jain and Mr. Jugal Kishore was authorised to deal with the matter between the complainant and the accused. He is in custody of the records of the Association only for the last two years and as per him the documents in question might be in the possession of the committee members or the then office bearers and he had not enquired from them regarding these documents before appearing in Court. In cross-examination he states that the members of the Association deposit the documents in original with the Association; records of the Association are maintained by the General Secretary and in respect of records pertaining to the complainant, he was not aware. He further states that Mr. Jugal Kishore was a member of the Association; however, Mr. Abhay Kumar Jain was not the member. This witness was examined on the strength of the order passed by the Co-ordinate Bench of this Court but his evidence is of no use of either of the parties.

3.6. Copy of the document Ex.DW-1/8 has been handed over in Court, same is taken on record. The said document shows that in November, 2012 the firm owned by the present petitioner had moved an application before the Delhi Saree Mercantile Association regarding its bad financial status. A Committee was constituted to look into the same. It had taken a decision on 09.01.2013 that 'Shiv Saree Bhandar', a firm of the petitioner, shall pay Rs.79,000/- quarterly to the present respondent on pro-rata basis from the amount due to the respondent. The said payment will be made through the

Association. Mr. Radhy Shyam Goyal was to withdraw the cases. The shop owned by the respondent was vacated by the present petitioner but the respondent had not withdrawn the cases and the Association had the information regarding theft of the cheque, which was misused by the present respondent and the Association had lodged a strong protest against the same.

4. In my view, these documents are quite material for the just decision of the complaint pending before the Metropolitan Magistrate. However, since the delay in disposal of the case is caused because the DE has been prolonged, I deem it appropriate to allow the present petition, set aside the impugned order dated 13.04.2022 and as a consequence allow the application of the present petitioner to examine the three witnesses mentioned hereinabove, namely, Ajay Goenka, who was the President of the Association at that time, Members of the Committee Mr. Jugal Kishore and Mr. Abhay Jain, subject to payment of cost of Rs.25,000/- by the present petitioner to the respondent.

5. The cost be paid on the next date of hearing before the Trial Court. In the meantime, the present petitioner, who is the respondent before the learned Metropolitan Magistrate shall take steps for summoning of these three witnesses on the next date of hearing giving complete details of the documents, which they are required to produce, if they are in their power and possession and the learned Trial Court is requested not to grant any undue adjournments in the present matter.

6. The petition is disposed of in the above terms.

TALWANT SINGH, J

NOVEMBER 9, 2022/mr

Click here to check corrigendum, if any