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

Date of Decision: August 04, 2015

+ CRL.M.C. 57/2014 & CrI.M.A.No.169/2014

SANDEEP CHAUDHARY Petitioner
Through: Mr. Jinendra Jain, Mr. Abhishek
Jain, Mr. S.A.Akhtar, Mr. Kanwal
& Mr. Shashwat Bhardwaj,
Advocates

versus

HARISH BATRA Respondent
Through: Mr. Rahul Gupta, Mr. Shekhar
Gupta & Mr. Umang Gupta,
Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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In a case under Section 138 of *Negotiable Instruments Act, 1881*, petitioner stands convicted by the trial court and in appeal, petitioner had filed application under Section 391 Cr.P.C. for summoning record of DEPB licences issued to M/s Jewel Craft, M/s Jewel International during the period from January, 2002 to March, 2006 from the office of Director General of Foreign Trade, ITO, New Delhi. Appellate Court vide impugned order has dismissed aforesaid application under Section 391 Cr.P.C. by observing that purchase of DEPB licences from petitioner is

an admitted fact and no additional evidence is required to be led on the issue.

At the hearing, learned counsel for petitioner had placed reliance upon decision in *Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat & Ors.* (2004) 4 SCC 158 to submit that additional evidence ought not be foreclosed when it is necessary for the just decision of the case. On the other hand, learned counsel for respondent had relied upon Apex Court's decision in *Indian Bank Association & Ors. v. Union of India & Ors.* (2014) 5 SCC 590 and *Pardeep@Sonu v. State (Govt. of NCT of Delhi)* 2011 III AD (Delhi) 735 to submit that summary trial procedure is to be adopted in cases pertaining to complaints under Section 138 of *Negotiable Instruments Act, 1881* and the guidelines framed to ensure summary trial were sought to be highlighted and it was submitted that the instant application is misconceived and has been filed just to delay the proceedings.

Upon hearing both the sides and on perusal of the impugned order, application under Section 391 Cr.P.C., material on record and the decisions cited, I find that there is a ledger account of petitioner as maintained by respondent and has been produced in evidence and petitioner has chosen not to produce his accounts. In application under Section 391 Cr.P.C., it is not stated as to why additional evidence could not be led earlier and that no record is available with petitioner. By way of an application under Section 391 Cr.P.C. a fishing inquiry cannot be permitted nor can a party be allowed to delay the proceedings. Record of licences issued to petitioner and transferred to respondent is already available with respondent-complainant and he has produced the ledger

account in this regard. Therefore, calling of the official records regarding the licences in question, pertaining to the transaction in hand is not necessary for the just decision of the case.

In the considered opinion of this Court, impugned order does not suffer from any palpable error. Finding no substance in this petition and application, they are dismissed while not commenting upon merits of this case, lest it may prejudice either side before trial court.

(SUNIL GAUR)
JUDGE

AUGUST 04, 2015

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