

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

Date of Decision: January 08, 2015

+ CRL.M.C. 2495/2013 & Cr. M.A. No.9688/2013

SANGEETA BAHAL Petitioner

Through: Mr. M.A. Niyazi & Mr. Manish
Kumar, Advocates

versus

SUDHANSHU DANG & ANR. Respondents

Through: Mr. S.K. Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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In proceedings under Section 138 of *The Negotiable Instruments Act, 1881* pertaining to dishonouring of cheque of ₹7,00,000/-, petitioner-accused had filed an application under Section 145 (2) of *The Negotiable Instruments Act, 1881*, which was dismissed by the trial court vide order of 25th November, 2011. The said order has attained finality. However, petitioner had again filed an application under Section 311 of the Cr.P.C. for recalling of complainant for cross-examination, which was dismissed. It is evident from the order of 21st November, 2012 (*Annexure P-11*) of the Revisional Court that counsel for petitioner had not pressed for recalling of the complainant for cross-examination and had restricted the prayer for examination of petitioner and his witnesses and in pursuance to

the aforesaid order, petitioner had stepped into the witness box as DW-1 and was duly cross-examined. Thereafter, petitioner had filed an application under the second Proviso to Section 143 of *The Negotiable Instruments Act*, r/w Section 145 (2) of *The Negotiable Instruments Act* and r/w Section 165 of the *Indian Evidence Act*, which stands dismissed vide impugned order of 28th May, 2014.

At the hearing, learned counsel for petitioner submitted that the discretion granted by judgment of a Coordinate Bench of this Court in Crl. M.C. No. 1996/2010, *Rajesh Agarwal Vs. State & anr.*, decided on 28th July, 2010 to deal with the application under Section 145 (2) of *The Negotiable Instruments Act* is not in consonance with the Apex Court's decision in *Mandvi Cooperative Bank Ltd. Vs. Nimesh B. Thakore* (2010) 3 SCC 83 wherein it has been clearly held that the accused has an absolute and unqualified right to cross-examine the complainant on filing an application under Sub-Section 2 of Section 145 of *The Negotiable Instruments Act*.

Learned counsel for respondents pointed out that petitioner had not filed an application under Section 145 (2) of *The Negotiable Instruments Act* within the time granted by the trial court vide order of 2nd August, 2011 (*Annexure P-4*). However, learned counsel for respondents submitted that petitioner has misused the process of law since November, 2011 and so, petitioner needs to be put to terms if petitioner is granted an opportunity to cross-examine the complainant.

In view of the stand taken as aforesaid, petitioner's application under Section 145 (2) of *The Negotiable Instruments Act* is allowed subject to cost of ₹60,000/- to be given to respondents before

cross-examination of the complainant. It is made clear that only one effective opportunity be granted to petitioner to cross-examine the complainant and if petitioner fails to do so, then further opportunity to cross-examine the complainant is not to be granted by the trial court. Since respondents' complaint is pending for the last about four years, therefore, trial court shall make all endeavors to expedite and conclude the proceedings in this case within three months from the date already fixed for hearing.. Let the parties appear before the trial court on 23rd January, 2015 to ensure compliance of this judgment, the date of hearing be preponed by the trial court.

With aforesaid directions, this petition and application are disposed of.

Trial court be apprised of this order forthwith.

Dasti.

(SUNIL GAUR)
JUDGE

JANUARY 08, 2015

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