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

Date of Decision: February 04, 2015

+ CRL.M.C. 4026/2013 & Crl. M.A. No.14387/2013

MICKY KALRA Petitioner

Through: Mr. K. Kaushik, Advocate

versus

STATE & ANR. Respondent

Through: Mr. Karan Singh, Additional
Public Prosecutor for State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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In proceedings under Section 138 of Negotiable Instruments Act, 1881, respondent-complainant's application under Section 311 Cr. P. C has been allowed by the trial court and the said order has been affirmed by the Revisional Court while noting that witnesses sought to be summoned are from different banks and one witness is from Economic Offences Wing to prove FIR No. 9/2008.

At the hearing, learned counsel for petitioner had relied upon Single Bench decision of Bombay High Court reported in *R.N. Kakkar Vs. Hanif Gafoor Naviwala & Others* 1996 CRL. L. J. 365 to submit that the complainant cannot be allowed to fill in the lacuna by way of application under Section 311 Cr. P.C. as complainant has already led the

evidence.

Upon hearing and on perusal of the impugned order, the material on record and the decision cited, I find that to explain the source of the loan amount, the deposition of these witnesses is essential for the just decision of this case. Merely because, there is no reference about the source of the loan in the complaint, would not provide a ground for refusal of the application under Section 311 of the Cr. P.C. The reliance placed upon the decision in *R.N.Kakkar* (supra) is of no avail, as the instant case is not the one wherein lacuna is sought to be filled up as the case is still at the stage of complainant's evidence before the trial court.

Finding no illegality and infirmity in the impugned order, this petition and the application are dismissed while not commenting on merits, lest it may prejudice either side before trial court.

(SUNIL GAUR)
JUDGE

FEBRUARY 04, 2015

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