

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

+ **CRL.M.C. 4019/2014 & Crl.M.A. 13783/2014**

Date of Decision : February 19th, 2016

OM PRAKASH JAIN Petitioner
Through Mr.J.P. Verma, Adv. with Mr.R.K.
Bharan, Adv.

versus

PUSHPA JAIN Respondent
Through Mr.Deepak Tyagi, Adv. with Mr.K.K.
Gautam, Adv. & Mr.Rishab Jain,
Adv.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the “Cr.P.C.”) has been filed by the petitioner for setting aside and quashing the order dated 07.02.2014, passed by the learned Metropolitan Magistrate, Tis Hazari Courts, Delhi whereby the request of the petitioner to summon witnesses, namely, Sumat Kumar Jain and Dhirender Kumar Saxena was declined.

2. Factual matrix, emerges from the petition, is that the petitioner had filed a criminal complaint which is pending before the Trial

Court. During the pendency of the complaint, the petitioner examined witnesses in support of his case. The petitioner sought to examine two more witnesses, namely, Sumat Kumar Jain and Dharendra Kumar Jain which was allowed by the Court on 05.04.2004. On 26.05.2009, the Court granted liberty to the petitioner to examine three witnesses. On 25.03.2011, the complainant moved an application under Section 311 Cr.P.C. to examine Santosh Kumar Jain as witness in lieu of two additional witnesses allowed on 05.04.2004. The said application was dismissed on 15.12.2012. On 23.07.2013, the complainant moved another application for summoning the witnesses and the request to summon the witnesses was declined vide impugned order dated 07.02.2014.

3. I have heard the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

4. Perusal of record shows that the criminal complaint was filed by the petitioner/complainant in the year 1999 against the respondent under Sections 500/120-B/192/34 IPC. In the list of witnesses, the complainant cited four witnesses including the complainant. The petitioner requested the Court below to allow him to examine two

more witnesses, namely, Sumat Kumar Jain and Dhirendra Kumar Saxena. The said request of the petitioner was allowed on 05.04.2004. On 26.05.2009, the Court below granted liberty to the petitioner to examine three more witnesses. On 11.01.2011, the complainant was granted liberty to summon the witnesses in post-charge evidence for which permission was granted vide order dated 05.04.2004.

5. It is further apparent from the record that on 25.03.2011, an application under Section 311 Cr.P.C. was moved by the petitioner to examine the witness Santosh Kumar Jain in lieu of two additional witnesses who were allowed to be examined on 05.04.2004 and 11.01.2011. The said application was dismissed by the Trial Court on 15.12.2012. After the dismissal of the said application, the petitioner again moved an application for summoning the witnesses and by passing the impugned order dated 07.02.2014, the request of the petitioner to summon Sumar Kumar Jain and Dhirendra Kumar Saxena was declined.

6. The conduct of the petitioner shows that he kept on delaying his own complaint on one pretext or the other. The list of witnesses

annexed with the complaint shows that initially the complainant sought to examine only four witnesses including himself. But later on, he requested to examine two more witnesses, namely, Sumat Kumar Jain and Dhirendra Kumar Saxena as additional witnesses. The petitioner was allowed to examine the said witnesses on 05.04.2004 and then on 11.01.2011. But despite having the permission to examine the said two additional witnesses, the complainant moved an application under Section 311 Cr.P.C. to examine witness Santosh Kumar Jain in lieu of those two witnesses. The said application was dismissed and then again the petitioner wanted to examine witnesses Sumat Kumar Jain and Dhirendra Kumar Saxena. Due to such an act and conduct of the petitioner, the respondent is also facing the prolonged litigation and has faced the harassment for such a long time. Such a conduct on the part of the petitioner cannot be allowed to be continued. It is pertinent to mention that the complainant closed his evidence before the Trial Court on 26.06.2015 and the case was fixed for statement of the accused.

7. In view of the above discussion, there is no illegality or

infirmity in the order dated 07.02.2014 passed by the learned Metropolitan Magistrate. Neither any abuse to the process of law nor any failure of justice has been demonstrated. This Court is of the considered opinion that no interference is warranted in the present case under Section 482 of Cr.P.C.

8. Consequently, the present petition is dismissed.

9. Application CrI.M.A. 13783/2014 is also disposed of.

(P.S.TEJI)
JUDGE

FEBRUARY 19, 2016
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