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

+ **CRL.M.C. No.2495/2016**

Date of Decision : 5th September, 2016

NAND KUMAR JHA PETITIONER

Through Mr.Ramesh K. Mishra, Adv.

versus

MOHAR KUMAR JHA RESPONDENT

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure praying for setting aside the order dated 27th May, 2016 passed by the learned Metropolitan Magistrate, Saket District Court, Delhi in an application filed by the accused for sending the cheques and acknowledgement receipt for FSL examination in CC No.142/6/2014 which is a criminal complaint under Section 138 of the Negotiable Instruments Act.

2. The facts giving rise to the present petition are that on 5th September, 2011, the petitioner lodged a police complaint against the respondent to the effect that the petitioner had taken a loan of Rs.40,000/- & Rs.30,000/- from the respondent in the month of

August, 2009 which is stated to have been paid back along with interest. It is submitted by learned counsel for the petitioner that the petitioner had tendered a few signed blank cheques along with original passport to the respondent as a security. It is submitted that after the return of loan with interest, the petitioner demanded for return of his cheques and passport but the same were not returned to him. It was further alleged that the respondent tried to extort money from the petitioner through forged documents.

3. It is further alleged that the respondent issued a legal demand notice under Section 138 of the N.I. Act dated 12th October, 2011 to the petitioner in which the respondent alleged dishonour of cheques amounting to Rs.1,00,000/- and Rs.50,000/- both dated 26th June, 2011.

4. The respondent filed a complaint case under Section 138 of the Negotiable Instruments Act in the Court of Learned ACMM, Saket Court Complex, New Delhi. It is further submitted that the respondent in the complaint further stated that he had given a friendly loan of Rs.1,70,000/- to the petitioner on 27th November, 2009 and on 20th May, 2010, the petitioner had also taken Rs.30,000/- from the respondent. The respondent had alleged that the petitioner had issued cheques dated 27th June, 2011, 27th July, 2011 for Rs.1,00,000/- & Rs.50,000/- respectively which were

dishonoured.

5. Learned counsel for the petitioner has submitted that the petitioner in his statement, evidence and cross-examination had stated that the contents of the receipt dated 27th November, 2009 had been manipulated.

6. It is further submitted that the petitioner moved an application before the Metropolitan Magistrate for sending the cheque to Forensic Science Laboratory in which the petitioner alleged that the amount and date was subsequently written on the cheque. Therefore, the expert opinion was required regarding the age of the cheque signed and the other body of the cheque filled.

7. In support of his contention, learned counsel for the petitioner relied on the pronouncement of Hon'ble Supreme Court in ***T. Nagappa Vs. Y.R. Murlidhar (2008) 5 SCC 633***.

8. I have heard learned counsel for the petitioner and carefully perused the available records.

9. Argument advanced by the learned counsel for the petitioner was that opportunity of rebuttal must be granted to the accused for adducing evidence and the accused is having a right to defend himself. It was further argued that the petitioner can prove his defence only after getting a report from the FSL regarding the age of the cheque signed and the other body of the cheque filled to

ascertain whether the cheques were filled and signed by the same person. It was the consistent stand of the petitioner that the cheques were not filled and signed by the same person. Counsel for the petitioner has relied upon a judgment in the case of ***T.Nagappa v. Y.R. Muralidhar (2008) 5 SCC 633*** in which it was observed that it is the accused who knows how to prove his defence and the court being the master of the proceedings must determine as to whether the application filed by the accused under sub-section (2) of Section 243 is bona fide or not. It was further observed that ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc.

10. This Court has already observed in several cases that once a document is referred to FSL or CFSL, it normally takes four to five years in obtaining report. Since the complaint is pending since 2013, sending the cheque in question to the FSL would take another four to five years to bring the complaint for conclusion. In this case, the signature on the cheques is not disputed. Such an approach of the petitioner cannot be appreciated as it would tantamount to further delay of the conclusion of the complaint case. The complaint case was fixed for defence evidence. Therefore, the petitioner cannot get any assistance from the

judgment in the case of ***T.Nagappa*** (supra).

11. In view of the aforementioned facts and circumstances and the discussion, this Court does not find any illegality or infirmity in the order dated 27th May, 2016 passed by the Court below.

12. Consequently, the present petition is dismissed.

(P.S.TEJI)
JUDGE

SEPTEMBER 05, 2016

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