

\$~
*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.M.C. No.2613/2016 & CrI.M.A. No.11196/2016**

Date of Decision : 8th SEPTEMBER, 2016

PREM GIRI

..... PETITIONER

Through: Mr.Ratnesh Tiwari, Advocate

versus

DAULAT RAM & ANR.

..... RESPONDENTS

Through: Mr.G.M. Farooqui, Additional
Public Prosecutor for the State

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

CRL.M.C. No.2613/2016

1. The present petition under Section 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (CrI.P.C.) has been preferred by the petitioner for quashing of the order dated 12th July, 2016 passed by the learned Additional Sessions Judge, North-East, Karkardooma Courts, Delhi.

2. A thumbnail sketch of the facts of the case emerging from the records and the complaint case filed by the respondent no.1, is that respondent no.1 executed an agreement to sell/Bayana with the petitioner for purchasing the property/house of the petitioner for a

total consideration of Rs.30,00,000/- and that the said agreement was duly signed by both the parties. The respondent no.1 paid a sum of Rs.10,00,000/- to the petitioner in advance as Bayana amount at the time of executing the said agreement to sell/Bayana by way of a cheque and further paid a sum of Rs.5,00,000/- to the petitioner in cash on account of part payment of the sale consideration. Thus, the respondent no.1 paid Rs.15,00,000/- in advance out of total sale consideration of Rs.30,00,000/-. Thereafter, the said deal could not be materialized due to certain reasons and the respondent no.1 asked for return of the advance paid amount of Rs.15,00,000/-. The petitioner gave a cheque for a sum of Rs.15.00 lakhs to the respondent no.1 in discharge of his liability. However, when the said cheque was presented for encashment by the respondent no.1, the same was dishonoured and returned unpaid with remarks "Account closed". Thereafter, the respondent no.1 approached the petitioner for apprising him about the dishonour of cheque but the petitioner did not reply to it.

3. Thereafter, the petitioner filed an application under Section 311 of the Cr. P.C. read with Section 145 of the Indian Evidence Act for again cross-examination of the respondent no.1 and an application under Section 315 Cr.P.C, before the learned

Metropolitan Magistrate.

4. In the application filed under Section 311 Cr. P.C., the petitioner had stated that the recalling of the respondent no.1 for further examination was necessary as he had discovered fresh evidence to the effect that he had succeeded to arrange extra judicial confession/statements of the complainant in the form of video recording while under Section 315 Cr. P.C., the petitioner wanted to examine himself as a witness to prove the said conversation.

5. The said applications were dismissed by the learned Metropolitan Magistrate on the ground that the conversation between the parties was not prior to filing of the complaint or immediately thereafter. It was further held that recalling of respondent no.1 and further his cross-examination was sought just to fill the lacuna in the defence of the accused. The second application i.e. under Section 315 Cr. P.C. moved by the accused, was dismissed on the ground that the said conversation was not an evidence necessary for the purpose of deciding the case and moreover, no other sufficient reason had been provided to permit the accused at that stage after a considerable delay, for getting himself examined.

6. The petitioner admitted issuance of cheque. In his application under Section 145(2) of the NI Act, the petitioner took the defence that he already paid a sum of Rs.11.00 lakhs to the respondent no.1 and a sum of Rs.1,00,000/- was due to him.

7. The petitioner preferred a criminal revision petition which was dismissed by the learned Additional Sessions Judge on 12th July, 2016. The learned ASJ held that the entire conversation took place between the petitioner and Mukesh and that the respondent no.1 was either hearing the conversation or stating the reason for filing of the complaint case but he had not made any admission. It was further held that the petitioner had moved the revision petition just to fill lacuna in his case and that the alleged conversation was not necessary for decision of the case.

8. I have heard learned counsel for the parties at length & gone through the available records. The complaint under Section 138/142 of the Negotiable Instrument Act was filed in April, 2011. Despite grant of various opportunities to the accused for leading defence evidence, the same were duly availed of by the accused but did not lead any defence evidence and that the defence evidence was closed on 16th April, 2015. The petitioner cannot be allowed either to recall respondent no.1 for the purpose of cross-

examination or to examine himself as a defence witness after a considerable delay. Even otherwise, the learned ASJ has after going through the transcript, held that the petitioner was just trying to obtain admission from the respondent no.1 but the whole conversation reflected that the petitioner and one Mukesh were discussing about certain payments which were allegedly made by the petitioner to the respondent no.1. The applications under Section 311 Cr. P.C. read with Section 145 of the Indian Evidence Act & under Section 315 Cr. P.C., therefore, were just preferred to fill in the lacunae inasmuch as the same were not put in cross-examination and were also not put in defence evidence by the petitioner for which opportunities were granted in the trial Court.

9. In view of the facts and circumstances mentioned above, this Court is of the considered opinion that the petitioner is trying to delay the judicial proceedings to avoid the outcome or gain an advantage instead of leading the case to final arguments on merits.

10. The learned Magistrate has delivered a reasoned order for the denial of the claim of the accused/petitioner. Similar reasoned order has also been passed by the revisional Court i.e. Court of Sessions. This Court is not of any different view than the one taken by learned Metropolitan Magistrate as well as by the Court of

Sessions. So the view of the learned Metropolitan Magistrate and the Court of Sessions is upheld by this Court also.

11. In the aforementioned facts and circumstances, this Court does not find any infirmity in the order dated 12th July, 2016 passed by the learned Additional Sessions Judge.

12. As a result of the same, the present petition and application are dismissed.

P.S.TEJI, J

SEPTEMBER 8th, 2016
aa