

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

Date of Decision: August 29th, 2016

+ CRL.M.C. 2741/2016

MUKESH BHATIA

..... Petitioner

Through Mr.Gurmeet Singh, Adv.

versus

RAM GOPAL GUPTA

..... Respondent

Through Nemo.

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

P.S.TEJI, J.

1. The present petition has been filed under Section 482 of Code of Criminal Procedure (hereinafter shall be referred as Cr.P.C.) read with Article 227 of the Constitution of India for quashing of order dated 25.05.2016 passed by the learned Metropolitan Magistrate vide which the application filed by the petitioner under Section 243(1) and (2) of the Cr.P.C. for sending the cheque to FSL was dismissed.

2. The facts in brief are that the respondent/complainant had filed a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (N.I. Act) against the petitioner/accused. It was alleged in the complaint that the petitioner/accused had taken the loan of Rs.2,00,000/- from the

respondent/complainant and to repay the said loan amount, he issued a cheque No.005093 dated 12.12.2008 for a sum of Rs.2,00,000/-. When the said cheque was presented for encashment by the respondent/complainant, the same could not be encashed and was dishonoured. The respondent/ complainant served a legal notice dated 30.12.2008 upon the petitioner/accused and thereafter filed the complaint.

3. During the pendency of the complaint case, petitioner/ accused moved the application under Section 243(1) and (2) of the N.I. Act which was dismissed by the learned Magistrate vide impugned order dated 25.05.2016. Feeling aggrieved by the dismissal of the application, the instant petition has been preferred by the petitioner.

4. Arguments advanced by the learned counsel for the petitioner were heard.

5. 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 that the signatures on the cheque were not of him. It was the consistent stand of the petitioner that the cheque in question did not bear his signatures. 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.

6. It is apparent from the record that the complaint in question was filed in the year 2009. The respondent/complainant as well as petitioner/accused have already adduced their respective evidence before the trial court. It is further apparent from the record that the defence evidence has already been closed on 30.10.2013 and since then the matter was pending for final arguments. When the matter was fixed for final arguments, the application for sending the cheque in question to FSL was moved by the petitioner/accused.

7. 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 for the last about 17 years, sending the cheque in question to the FSL would take another four to five years to bring the complaint for conclusion. The petitioner/accused has not moved any such application during the entire trial and the application was moved only when the matter was fixed for final arguments. Such an approach of the petitioner cannot be appreciated as it would tantamount to further delay of the conclusion of the complaint case. Therefore, the petitioner cannot get any assistance from the judgment in the case of *T.Nagappa* (supra).

8. In view of the aforementioned facts and circumstances and

the discussion, this Court does not find any illegality or infirmity in the order dated 25.05.2016 passed by the Court below.

9. Consequently, the present petition and application Crl.M.A. 11725/2016 are dismissed.

(P.S.TEJI)
JUDGE

AUGUST 29, 2016
dd

