

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

Judgment delivered on : September 30, 2016

+ CRL.M.C. 2927/2016

INDERJEET SINGH MAGGON

..... Petitioner

Through: Mr.Arun Baali, Mr.Siddharth Yadav
and Mr.Jaskaran Singh, Advs.

versus

HARASH SURI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. By this petition filed under Article 227 of the Constitution of India read with Section 482 of Cr. P.C. the petitioner is seeking an order thereby challenging the impugned order dated 04.07.2016, whereby learned Metropolitan Magistrate – 01, N. I. Distt. West, Tis Hazari, Delhi, vide which the application under Section 311 of Cr.P.C. filed by the respondent was allowed.

2. In nutshell, the present dispute is relating to the bouncing of cheques given by the petitioner to the respondent herein in lieu of friendly loan of Rs.18 lacs. Proceedings under Section 138 of

Negotiable Instruments Act, 1881 were conducted before the trial Court. Apart from the aforesaid case for recovery of sum of Rs.18 lacs, another complaint under Section 138 of NI Act is also pending against the petitioner, which was filed by one Shri Yogender Verma for recovery of Rs.19.5 lacs. The respondent in the present case has got the copy of the undertaking given by the petitioner herein to Shri Yogender Verma admitting the liability towards the respondent and his wife. Though the said Yogender Verma has also filed a complaint under Section 138 of NI Act against the petitioner herein, but the Respondent in the present petition, filed an application under Section 311 of Cr.P.C. for placing the copy of the undertaking given by the petitioner to the respondent on record. The learned Metropolitan Magistrate vide order dated 04.07.2016 allowed the application of the respondent and that's why the petitioner has preferred the instant petition.

3. Learned counsel for the petitioner contended that the respondent has filed the application under Section 311 of Cr.P.C. for placing the copy of undertaking on the record of his case just to delay the trial. Besides this, it is contended that the complaint under Section 138 of NI Act filed by the wife of the respondent herein has already been dismissed by the trial Court. It is further contended that the respondent has already admitted during his cross-examination that no acknowledgement was given by the petitioner in writing against the alleged loan of Rs.18 lacs. Moreover, the respondent has never intimated in the legal notice sent to him and filing the copy of

undertaking on record is just a tactics to fill up the lacunae in the complaint under Section 138 of NI Act filed by the respondent. It is further contended that there is a specific statement of the respondent in the case that neither in the case of respondent nor in the case of wife of respondent, there was any acknowledgement of loan made by the petitioner either in writing or otherwise. Therefore, it is a settled proposition of law that the admissions made by the party need not to be proved.

4. While challenging the impugned order dated 04.07.2016, learned counsel for the petitioner contended that there was no cogent and sufficient ground for allowing the application under Section 311 of Cr.P.C. filed by the respondent. More so, the trial of the case is at final stage and therefore at the fag end of the trial, the application under Section 311 of Cr.P.C. filed by the respondent could not have been allowed. It is contended that the impugned order is passed by the learned Metropolitan Magistrate in a routine manner and without recording the contention of the petitioner, therefore, the same is liable to be set aside.

5. I have heard the aforesaid submissions of learned counsel for the petitioner as well as gone through the contents of the petition, depositions as relied upon by the petitioner and the impugned order. This Court appreciate with the submission of the petitioner herein that it is a settled proposition of law that the admission made by a party need not be proved. The settled proposition of law cannot be applied

only for a particular party, rather it applies to all. What this Court observes from the perusal of the Undertaking dated 15.02.2013, sought to be brought on record by the respondent in his case, which is duly signed by the petitioner herein. There is admission on the part of the petitioner with regard to receipt of dasti loan of Rs.18 lacs in cash from Harash Suri (respondent herein) and Rs.20 lacs from Smt. Vinika Suri (Rs.11 lacs through bank transaction and balance of Rs.9 lacs in cash).

6. Before allowing the application under Section 311 of Cr.P.C. it is the duty of the Court to determine the relevance of any document for being brought on record and from the perusal of the impugned order, this Court observes that the learned Metropolitan Magistrate has exercised his discretion under Section 311 of Cr.P.C. while discussing the settled law that no party should suffer loss and the best possible evidence should be brought before the Court by respective parties to prove their points of contention. This Court does not find any irregularity or infirmity in the said order.

7. It is also a settled principle that the Trial Court has been given an undoubted discretion in the matter and the discretion has to be judiciously exercised by it. In the considered opinion of this Court, once the Trial Court has exercised its discretion, it is not for this Court, to substitute its own discretion for that of the learned Metropolitan Magistrate or to examine the case on merits with a view to find out whether or not the document sought to be placed on record

is relevant or not for the proper adjudication of the case. Moreover, the petitioner is already vested with a right to cross-examine the respondent in the case, therefore no question of any prejudice seems to be caused to the petitioner herein.

8. Before parting with the order, this court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the present petition. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

9. In view of the aforesaid discussions, the present petition filed by the petitioner is dismissed.

10. A copy of this order be sent to Trial Court for information.

(P.S.TEJI)
JUDGE

SEPTEMBER 30, 2016

pkb