

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

% Decided on: 21st September , 2016

+ **CRL.M.C. 3489/2016 & Crl.M.A.14736/2016**

CHITRA SAINI

..... Petitioner

Represented by: Mr. Anjani Kumar, Mr.
Sudhendu Sundaram, Advs.

versus

STATE & ANR.

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP.

**CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA**

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order dated 4th April, 2016 dismissing the application under Section 311 Cr.P.C. filed by the petitioner/ accused in complaint case No.509/14 titled as '*Dhyan Kaur Vs. M/s. Game On & Ors.*' under Section 138 of the Negotiable Instruments Act (in short the NI Act) for calling Sardar Trilok singh as a witness, the order dated 4th July, 2016 dismissing the second application under Section 311 Cr.P.C. for calling the concerned officials of Axis Bank with details of cheque No. 114932 dated 19th October, 2012 and cheque No. 114937 dated 3rd November, 2012 vide order dated 4th July, 2016 and quashing of the complaint case, the petitioner prefers the present petition.

2. A complaint under Section 138 NI Act was filed by Dhyan Kaur wife of Sardar Trilok Singh through her attorney Rishi Vadhera stating that she was the owner of premises No. 40/52, (Basement) Chitranjan Park, New Delhi and the said premises was given on rent to the tenant for 11 months for business purposes of running of Games Parlor (Snooker and Pool Table) commencing from 5th November, 2012 to 4th October, 2013 with an option to the accused firm to renew the same twice only at a monthly rent of ₹1 lakh minus TDS of ₹10,000/- payable in advance on or before 5th of each calendar month besides water, electricity and other charges vide agreement of tenancy dated 5th November, 2012. The accused handed-over 11 post-dated cheques duly signed by accused No.2 i.e. Chitra Saini, the petitioner herein and the authorized signatory of the firm 'M/s. Game On' in the name of the complainant in respect of future rent and it was assured that all cheques would be honoured. However, two cheques bearing No. 162806 and 162807 dated 5th June, 2013 and 5th July, 2013 for a sum of ₹90,000/- each when presented were dishonoured by the bank with the remarks 'Funds Insufficient'. On receipt of the return memos from the bank, the complainant issued notice, however no payment was made in the statutory period of 15 days and thus the complaint was filed.

3. During the course of arguments no case whatsoever has been made to show that the complaint under Section 138 of NI Act was not maintainable and the same be quashed.

4. As regards the two applications under Section 311 Cr.P.C.; by the first application disposed of on 4th April, 2016 the petitioner sought examination of Sardar Trilok Singh. In the reply filed by the respondent it was stated that since the tenanted agreement dated 5th November, 2012 was not the basis

of complaint under Section 138 NI Act, the complainant and her husband who were permanent residents of United Kingdom, were not required to be personally examined. Further Rishi Vadhera was the only person who had personal knowledge of the transaction between the parties as the tenancy agreement was executed through him as a power of attorney and thus the deposition of Sardar Trilok Singh was irrelevant and was sought by the petitioner to delay the proceedings. The learned Trial Court noted that in the application only a blanket averment was made to the effect that Sardar Trilok Singh was required to depose about the facts of the case. It was not spelt out as to how and in which manner the evidence of Sardar Trilok Singh was necessary to decide the controversy involved in the present case. Further all the documents i.e. cheque in question, return memo, legal notice had been exhibited on record and the defence of the accused herself was that she had handed over 33 blank signed cheques to the complainant towards rent of the premises. Thus the rent agreement and payment of rent and receipt of legal notice having been admitted, the deposition of Sardar Trilok Singh was unnecessary.

5. As noted above CW-1 Rishi Vadhera was a constituted attorney of the complainant. He deposed and exhibited the documents as noted above on 1st October, 2014 where after matter was adjourned on a number of dates and despite giving several opportunities to cross-examine him, he was not cross-examined and thus the opportunity was closed finally on 29th June, 2015. The order dated 29th June, 2015 closing the opportunity to cross-examine Rishi Vadhera has attained finality, having not been challenged and thus in the garb of an application under Section 311 Cr.P.C., the complainant could not call Sardar Trilok Singh who was a permanent resident of U.K. to delay

the proceedings. Thus there is no error in the impugned order dated 4th April, 2016 passed by the learned Metropolitan Magistrate.

6. As regards order dated 4th July, 2016 is concerned, the petitioner sought examination of manager/ clerk of Axis Bank and HDFC Bank with details of cheque No. 114932 and 114937 and other 32 undated cheques. As noted by the learned Trial Court the said cheques noted herein before were not in issue in the complaint case and it is an undisputed fact that post-dated cheques were given in discharge of liability of paying the rent of which two, i.e. 162806 and 162807 dated 5th June, 2013 and 5th July, 2013 were dishonoured. Thus, there was no relevance to examine the witness from the bank in relation to all other cheques between the parties. Finding no error even in the impugned order dated 4th July, 2016 the petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 21, 2016
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