

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

+ CRL.M.C. 4309/2015 & Crl.M.A. Nos.15245-15246/2015

Date of Decision : January 21st, 2016

SANJAY JAIN

..... Petitioner

Through Mr.Vijay Aggaarwal, Ms.Barkha
Rastogi, Mr.Raghavendra and
Mr.Neeraj Jha, Advs.

versus

STATE & ANR.

..... Respondents

Through Mr.Ashish Dutta, APP.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the "Cr.P.C.") has been filed by the petitioner for setting aside order dated 27.06.2015 passed by the learned Metropolitan Magistrate, Patiala House Courts, New Delhi whereby the application under Section 311 Cr.P.C. filed by the petitioner was dismissed in Criminal Case No.120/2012.

2. Factual matrix, emerges from the record, is that a criminal complaint under Section 138/141 of the Negotiable Instruments Act, 1881 was filed by the respondent no.2/complainant alleging therein that accused no.1 company-Surya Vinayaka Industries Limited is a

public limited company and accused/petitioner-herein was one of its promoters. Accused no.3 was another promoter of the accused no.1 company. Accused nos.2 to 10 were the incharge of the affairs of the accused no.1 company at the relevant time. The complainant entered into an agreement dated 11.03.2011 with the accused no.1 company whereby the Share Purchase Agreement dated 12.11.2010 was amended. They purchased 659,926 equity shares from the complainant for a consideration of Rs.149,39,16,574.22/-. The accused persons issued several cheques to meet the payment obligations. Six cheques issued by the accused persons were returned unpaid. Therefore, the criminal complaint No.120/2012 was filed.

3. During the pendency of trial, the petitioner/accused moved an application under Section 311 Cr.P.C. for recalling the complainant witness, which was dismissed by the Trial Court vide impugned order dated 27.06.2015. Feeling aggrieved by the same, the present petition has been preferred by the petitioner.

4. Arguments advanced by the learned counsel for the petitioner as well as learned Additional Public Prosecutor for the State have been heard.

5. The argument advanced by the learned counsel for the petitioner is that the complainant witness Ajay Tandon was examined and his cross-examination was closed on 27.08.2014. During cross-examination of Ajay Tandon, the petitioner/accused could not put his defence effectively. The previous counsel had put suggestions to the said witness qua other accused persons but he did not put any suggestions qua the petitioner/accused.

6. During the course of arguments, learned counsel for the petitioner drew the attention of this Court to the cross-examination of CW-1 Ajay Tandon dated 23.05.2014 which shows that the counsel appearing for the accused persons did not put any suggestion to the said witness for the petitioner-herein.

7. After going through the order sheets of the Trial Court and the examination of the witness Ajay Tandon, this Court does not find any discrepancy in the view taken by the Trial Court. However, it has been shown that the cross-examination of the said witness was not done effectively qua the present petitioner.

8. It is matter of record that vide a common impugned order, the Trial Court dismissed the application of the petitioner in six cases

bearing Criminal Complaint Nos.117/1, 118/1, 119/1, 120/1, 85/1 & 86/1. The petitioner has placed on record the copy of order dated 30.11.2015, passed by this Court in Crl.M.C. No.4626/2015. In the said matter, the impugned order dated 27.06.2015 passed in Criminal Complaint No.85/12 was challenged. This Court allowed the petition of the petitioner-herein subject to cost of Rs.25,000/-.

9. It is a settled law that every accused has a right to be fairly and adequately represented in a criminal trial. Every accused has a right to meet the case of the prosecution on even terms. It is even the duty of the Court to ensure that an accused is represented by a diligent and competent counsel. Fair trial is the main object of criminal procedure and it is the duty of the Court to ensure that such fairness is not hampered or threatened in any manner.

10. In view of above mentioned facts and circumstances, this Court is of the considered opinion that the petitioner be given one opportunity being last opportunity to put suggestions to CW-1 Ajay Tandon on the next date of hearing before the Trial Court, subject to cost of Rs.25,000/- to be paid to the complainant.

11. In view of the above, the present petition is allowed.
12. Applications Crl.M.A. Nos. 15245-15246/2015 are accordingly disposed of.

(P.S.TEJI)
JUDGE

JANUARY 21, 2016
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