

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 2nd March, 2017**

+ CRL.M.C. 4230/2014

DILIP KUMAR

..... Petitioner

Through: Mr. R.S. Chauhan, Advocate with
Mr. Varun Nischal, Advocate.

versus

SUNITA MITTAL

..... Respondent

Through: Mr. Anand Prakash, Advocate.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I.S. MEHTA, J.

1. The instant petition under Section 482 Cr.P.C. is preferred by the petitioner against the impugned order dated 23.08.2014 passed by the learned Additional Sessions Judge Cum Special Judge-II, CBI Rohini Courts: Delhi in criminal revision No. 25/14 wherein the learned ASJ disposed of the petition directing against the order dated 24.05.2014 passed by the learned Metropolitan Magistrate in complaint case No.

1555/1/12 titled as Ms. Sunita Mittal vs. Dilip Kumar @ Raju & Ors.

2. The brief facts stated are that Ms. Sunita Mittal present respondent/complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 on 08.08.2012 qua against Dilip Kumar the present petitioner and two other persons, i.e. Iqbal Chand and Vicky Kumar.
3. The basis of the complaint under Section 138 NI Act was that the petitioner had issued six post dated cheques in favour of the respondent in furtherance of the loan agreement dated 24.10.2011 for Rs. 1,43,00,000/- (Rupees One Crore Forty Three Lacs Only). However, the said cheques were dishonoured on presentation. Thereafter the respondent issued legal demand notices dated 14.07.2012 to the petitioner and when the petitioner failed to repay the loan amount within 15 days notice period it led to the filing of a complaint case under Section 138 NI Act before the Court of Additional Chief Metropolitan Magistrate, (N-W), Rohini, Delhi.
4. On the basis of the documents available on record the learned Metropolitan Magistrate, (N/W)/Rohini Courts, Delhi took cognizance of the case and issued notice under Section 251 Cr.P.C. against the petitioner vide order dated 16.02.2013.
5. During the trial proceedings the respondent/complainant(CW-1) was cross-examined by the counsel for the petitioner and several questions were asked from her one of which related to the income tax returns(ITRs).

Consequently, the learned MM deferred the further cross-examination of the respondent/complainant for want of ITRs for the period 2005-2006 to 2011-2012 vide order dated 24.05.2014 in C.C. No. 1555/1/12.

6. Aggrieved by the said order dated 24.05.2014 the respondent/complainant filed a revision petition under Section 397 Cr.P.C. before the Court of District Judge(North-West), Rohini Courts, Delhi and vide order dated 23.08.2014 the learned Additional Sessions Judge Cum Special Judge-II, CBI Rohini Courts, Delhi passed the impugned order wherein the learned ASJ allowed the revision petition by setting aside the order dated 24.05.2014 with the appropriate direction to the learned MM to afford further opportunity for cross-examination to the petitioner/accused in which the learned MM would allow only those relevant questions confined to repayment of the loan by the petitioner/accused.

Hence the present petition.

7. The learned counsel for the petitioner has submitted that the respondent/complainant had filed a complaint under Section 138 N.I. Act and when the respondent/complainant was in the witness box, the petitioner had cross examined the witness pertaining to the income tax records to which the respondent/complainant was unable to explain for want of document of income tax records and the Court below granted permission to the petitioner to put the question and directed the

respondent/complainant to produce the income tax records on the next date of hearing vide order dated 24.05.2014.

8. The learned counsel for the petitioner has further submitted that the said order dated 24.05.2014 passed in favour of the petitioner was challenged by the respondent/complainant before the Court of Sessions and the learned ASJ allowed the said revision petition vide impugned order dated 23.08.2014.
9. The learned counsel for the petitioner has submitted that the cross-examination already conducted has been deleted by the Sessions Court and the scope of further cross-examination has been made very limited to the extent of repayment which should not have been done. It is further submitted that the legal notice and the property transactions which are subject matter of the dispute and is the foundation of the cross-examination to bring out the truth has been taken away by the impugned order of the learned ASJ.
10. The learned counsel for the petitioner has submitted that the order of the Court of Sessions does not justify after deleting the previous cross examination for its restriction because the cross examination is to be conducted on the basis of the plea of defence taken by the accused to safeguard himself from the clutches of the respondent/complainant and rebut the presumption.
11. The learned counsel for the petitioner has further submitted that the impugned order passed by the learned ASJ is bad in law as the order dated 24.05.2014 passed by the trial

Court was an interlocutory order to which revision should not have been entertained and prays that the impugned order dated 23.08.2014 passed by the learned ASJ is liable to be set aside as the same is bad in law. Reliance is placed on the following judgments:

- i. *Sethuraman vs. Rajamanickam; (2009) 5 SCC 153.*
- ii. *Amar Nath vs. State of Haryana; (1977) 4 SCC 137.*
- iii. *Madhu Limaye vs. State of Maharashtra; (1977) 4 SCC 551.*

12. On the other hand the learned counsel for the respondent has submitted that the order dated 24.05.2014 passed by the learned Metropolitan Magistrate was bad in law and the respondent had approached the Court of Sessions in revision. It is further submitted that the impugned order dated 23.08.2014 is not an interlocutory order rather it is an intermediate order.

13. The learned counsel for the respondent has submitted that the order dated 23.08.2014 passed by the Court of Sessions is correct and prays that the present petition be dismissed.

14. The challenge in the present petition is to the impugned order dated 23.08.2014 passed by the learned ASJ and the relevant para of the said order is reproduced as under:

"...Accordingly, the revision petition is allowed with the direction to Metropolitan Magistrate to afford further opportunity for cross examination to the accused in which the Magistrate would allow only those relevant

questions confined to repayment of the loan by the accused..."

15. The defence taken by the petitioner under Section 251 Cr.P.C. is reproduced as under:

*" IN THE COURT OF SH. SHEFALI BARNALA
TANDON, MM, ROHINI, DELHI*

CC No.: 1555/12

Sunil Mittal

Vs

Dalip Kumar

NOTICE OF ACCUSATION u/s. 251 Cr.P.C

I, Shefali Barnala Tandon, MM Rohini, Courts, Delhi do hereby serve notice upon you accused Dalip Kumar s/o Shri Iqbal Chand, Partner M/s. Vikas Properties, 96, Priyadarshni Vihar, (near Kalyan Vihar), Delhi-09 as under:

That you in discharge of your legal liabilities/financial obligations had given cheques bearing No. 562546 dated 12.06.2012, 562547 dated 5.6.2012, 450359 dated 26.6.2012, 450360 dated 3.7.2012 for Rs.25,00,000/- each and all drawn on HDFC Bank Ltd., B-3/2 Ashok Vihar, Phase-II Delhi and 014868 dated 31.5.2012 for Rs.25 lacs and 014867 dated 29.5.2012 for Rs.18,00,000/- both drawn on Axis Bank Limited, Derawal Nagar, New Delhi to the complainant towards the loan amount. The said cheques were returned without encashment with the remarks "Payment stopped by the drawer" and "Account Closed vide returning memos Ex.CW1/9, Ex.CW1/10 dated 7.7.2012 and 9.7.2012 where were followed by legal notice dated 14.7.2012 through Speed post and courier advising you to pay the amount of the aforesaid cheque to the

complainant which you failed to pay within the requisite time period and thereby committed an offence punishable u/s 138 of Negotiable Instruments Act, within the cognizance of this court.

Show cause why you should not be tried by this Court for the said Notice in accordance with law.

RO & AC

*(SHEFALI BARNALA
TANDON)*

MM/Rohini/Delhi/16.2.2013

Notice has been read over and explained to the accused in vernacular:

Q.1 Have you understood the notice?

Ans. Yes.

Q.2 Do you plead guilty?

Ans. I do not plead guilty and claim trial.

Q.3 What do you want to say in your defence?

Ans. I had given the aforesaid cheques as security towards the loan amount of Rs.1.43 crore. The cheques were filled in all respects. Again said, the cheques were undated. I have also got my property registered in the name of the complainant but after I made the payment towards the entire loan amount. On making the payment more than 50%, the properties were registered back in my name. However the original documents were kept by the complainant. Thereafter, on making the balance payment of Rs.25 lacs on 24.5.2012, the complainant returned me original documents of my property. I had repaid the loan amount by way of cheques and cash and I have receipt of the same.

Therefore, nothing remains due upon me and I do not have any liability. The complainant has misused my cheques. On 20.6.2012, I had sent the legal notice to the complainant for returning my cheques. Thereafter the complainant presented my cheques in the bank which got dishonoured. I had not received the legal notice.

RO & AC

(Shefali Barnala Tandon)

MM(N/W)/Rohini Courts, Delhi
16.2.2013"

1. Interlocutory Order

16. The word "Interlocutory" as per the Oxford English Dictionary Volume 1 is defined as:

"a judgment deciding a point within a case, but not necessarily the whole case; a decree or judgment given in the course of an action or as a preliminary to coming to trial."

As per Webster's Third International Dictionary, the expression "interlocutory" has been defined as:

"not final or definite; made or done during the progress of an action; intermediate, provisional".

17. In ordinary parlance an interlocutory order is an order which is made during the progress of a cause upon some incidental matter which arises out of the proceedings. It is made during the pendency of an action which does not dispose of the case but leaves it for further action by the Court in order to settle and determine the entire controversy. It only decides a

particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but does not however conclude the trial at all.

18. The Apex Court in the case *Amar Nath vs. State of Haryana; AIR 1977 SC 2185* has observed:

"...It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties..."

2. Intermediate Order

19. In the common parlance an intermediate order is an order which is made between the commencement of the action and its final determination, incident to and during the progress of the action which determines not the cause but only some intervening matter relating to the cause.

20. Section 91 of the Cr.P.C. is reproduced as under:

" 91. Summons to produce document or other thing. (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to

produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-
(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

21. In the present petition the order dated 24.05.2014 passed by the learned Metropolitan Magistrate is in the form of the direction for the production of the income tax returns(ITRs) for the period 2005-2006 to 2011-2012 of the respondent/complainant at the time of cross-examination by the counsel of the petitioner.
22. The cross-examination of the respondent/complainant would be on the basis of its relevancy of the facts of the allegation put to the accused in the examination in chief attributing its motive and its connection or linkage with the facts attributing to the commission of the offence.
23. Once the petitioner/accused takes the particular line of defence in the notice under Section 251 Cr.P.C. it is expected that the cross-examination would be on the same line.

24. Instant is a petition where a complaint was filed under Section 138 NI Act against the petitioner. The petitioner in his defence in the notice under Section 251 Cr.P.C. has stated that the cheques in question were issued by him and he had repaid the loan amount through cheques and cash and has receipts of the same therefore, he does not owe any liability against the respondent/complainant and the respondent/complainant had misused his cheques and he had issued a legal notice dated 14.07.2012 to the respondent/complainant and thereafter the respondent/complainant represented the cheques which were dishonoured.

25. The cross-examination to the respondent/complainant(CW 1) on the point of asking for the production of the ITRs though not relevant directly but the learned Metropolitan Magistrate since directed the respondent/complainant to produce the ITRs for the period 2005-2006 to 2011-2012 was made under Section 91 Cr.P.C. and further cross-examination has to be based on its relevancy part only.

26. Here, it is not out of place to mention that the petitioner/accused does not have liberty to further cross-examine the respondent/complainant(witness CW 1) to frustrate the entire objective of the summary trial or harass the respondent/complainant.

27. The contention of the learned counsel for the petitioner that the learned ADJ vide impugned order dated 23.08.2014 has

curtailed the scope of further cross-examination is not convincing and cannot be accepted as the petitioner/accused cannot be allowed to further cross-examine the respondent/complainant(witness CW 1) on irrelevant aspects which are not directly relevant for the purpose of determination of the offence committed.

28. The direction given by the learned Metropolitan Magistrate vide order dated 24.05.2014 to the respondent/complainant is an intermediate order passed under Section 91 Cr.P.C. which is in the form of a final order for the purpose of giving the direction for production of the ITRs is concerned.

29. Therefore, the order dated 24.05.2014 in C.C. No. 1555/1/2012 is a revisionable order under Section 397 Cr.P.C. and the argument of the learned counsel for the petitioner that the abovementioned order passed by the learned Metropolitan Magistrate is an interlocutory order which is hit by Section 397(2) Cr.P.C. fails.

30. As discussed above I find no merit in the contentions of the learned counsel for the petitioner as well as the judgments relied by him are not helpful in the facts and circumstances of the present case as there is no specific material available on record to invoke inherent powers of this Court under Section 482 Cr.P.C. Reliance is placed on the judgment of this Court in the case *Pran Nath Dhawan vs. Union of India; 1984 (17) ELT 12* wherein the Court has observed:

"...The Court observed that nothing in the Code, not even Section 397, can effect the amplitude of the inherent power put even a general principle pervades this branch of law so that when a specific provision is made, easy resort to inherent power is not right except under "compelling circumstances". It was further pointed out that not that there was absence of jurisdiction but that the inherent power should not invade areas set apart for specific power under the same Code."

31. Consequently, the present petition is dismissed and the impugned order dated 23.08.2014 passed by the learned ASJ in revision petition No. 25/14 does not warrant any interference by this Court to invoke inherent powers under Section 482 Cr.P.C.

32. Let one copy of this judgment be sent to the concerned Court(s).

No orders as to cost.

I.S.MEHTA, J

MARCH 02, 2017/km