

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

% Decided on: 28th April, 2017

+ **CRL.M.C. 4267/2016 and Crl. M.A. No. 17790/2016 (Stay)**

MAKHAN SINGH

..... Petitioner

Represented by: Mr. A.K. Singh, Advocate.

versus

KAUSHAL K RANA

..... Respondent

Represented by: Mr. Vijay Kumar Aggarwal and
Mr. Neeraj K. Jha, Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The petitioner is facing trial in a complaint filed by the respondent being complaint case No.2001/2004 titled as Kushal Kumar Rana vs. Makhan Singh under Section 138 of the Negotiable Instruments Act, 1881 (in short 'NI Act'). The petitioner is also facing trial in FIR No.195/2013 registered at PS Economic Offence Wing also on the complaint of respondent herein.
2. During the pendency of the above noted trial under Section 138 NI Act, the petitioner was produced as an accused from judicial custody as he was in custody in FIR No.195/2013 from 15th February, 2014 to 22nd September, 2016.
3. Pursuant to service of summons in the above noted complaint case the petitioner/accused entered appearance before the learned Trial Court on 13th May, 2014 from custody in the FIR as above noted and an adjournment was sought by him as his counsel could not attend the court. The matter was listed for 20th May, 2014 for cross-examination of the complainant by filing

an application under Section 145 (2) of the NI Act. On 20th May, 2014 since the learned Presiding Officer was also looking after the work of Link Traffic Court the matter was adjourned to 4th June, 2014. On 4th June, 2014 when counsel for the accused was not present complainant was partly cross-examined and the order passed by the learned Metropolitan Magistrate dated 4th June, 2014 notes as under:

*“Present: Complainant along with Ld. Counsel.
Accused in JC in some other matter (on bail in this case).*

Complainant partly cross-examined. On 13.05.2014, accused has sought adjournment to cross-examine the complainant on the ground that his counsel is unable to attend the court which was granted by this Court. Today during the cross-examination court has directed the counsel for the accused to confine his cross-examination to the defence disclosed by the accused while he was put to notice however counsel for the accused has disagreed with the same and stated that his right to cross-examine cannot be curtailed. Finally, he has sought adjournment to conclude the cross-examination on the ground that he has to attend some matters fixed in Patiala House Courts. This court does not find it as a just ground to adjourn the remaining cross-examination of the complainant. The mandate of Section 309 Cr.P.C. is very clear on this point. Hence, the right of the accused to further cross-examine the complainant stands forfeited.

Complainant has closed his evidence vide separate statement.

Be listed for SA on 08.08.2014.”

4. It is apparent that this was the second effective date before the learned Trial Court when the accused appeared from custody and in the absence of

the counsel the learned Trial Court closed the cross-examination of the complainant on behalf of the petitioner/accused.

5. Aggrieved by the order dated 4th June, 2014 the petitioner filed an application under Section 311 Cr.P.C. for recalling the complainant for examination which was dismissed by the impugned order dated 10th June, 2016. Hence by the present petition, the petitioner assails both the orders dated 4th June, 2014 and 10th June, 2016.

6. Though inadvertently in the application under Section 311 Cr.P.C. the petitioner noted that the cross-examination of the complainant was deferred but as noted above right of further cross-examination of the complainant was closed on 4th June, 2014. Vide the impugned order dated 10th June, 2016 the learned Trial Court did not even notice the fact that all through from 15th February, 2014 to 22nd September, 2016 the petitioner who was the accused in the above noted FIR and complaint case was in custody and if he had no proper counsel to defend himself the Court was obliged to provide him proper legal aid. Neither was any legal aid provided nor the fact that the petitioner was in custody noted and the application under Section 311 Cr.P.C. which was dismissed vide order dated 10th June, 2016.

7. Consequently, orders dated 4th June, 2014 and 10th June, 2016 passed by the learned Metropolitan Magistrate in Complaint Case No.2001/2004 titled as Kushal Kumar Rana vs. Makhan Singh are set aside. The application of the petitioner under Section 311 Cr.P.C. for further cross examining the complainant is allowed. As per the order sheet the last date in the matter was 25th April, 2017 however, learned counsels for the parties state that the next date before the learned Trial Court is 11th August, 2017. The petitioner is granted one opportunity to cross-examine the complainant

on the next date of hearing, that is, 11th August, 2017. In case the cross-examination cannot be conducted on the ground that the learned Presiding Officer is not available or does not have time or the complainant is not present further opportunity would be granted to the petitioner to cross-examine the complainant.

8. Petition and application are disposed of.

9. Trial court record be sent back.

(MUKTA GUPTA)
JUDGE

APRIL 28, 2017
‘vn’

