

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

% Date of Judgment: 3rd November, 2017

+ CRL.M.C. 5084/2015 and Crl.M.A.No.18321/2015

1. VIPIN KUMAR Petitioner

**Through: Mr.Shiv Chopra and Mr.Mayank
Mishra, Advocates.**

versus

1. STATE OF DELHI

2. ARK FLUID SYSTEM COMPONENTS PVT. LTD.

..... Respondents

**Through: Mr.Raghuvinder Varma, APP for
State.
Mr.Manoj Ohri, Sr. Advocate with
Mr.Rahul Sharma, Advocate for R-2.**

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I.S. MEHTA, J.

1. Instant petition under Section 482 Cr.P.C. read with Article 227 of the Constitution of India has been preferred by the petitioner-Vipin Kumar seeking quashing of the impugned order dated 26.10.2015 passed by the learned Civil Judge, South East, Saket Court, New Delhi in CC. No. 14/2013.

2. Brief facts as per the complaint are that the respondent No.2- Ark Fluid System Components Pvt. Ltd. is a company duly incorporated under the Companies Act, 1956 with its registered office at F-7B, Okhla Industrial Area-I, New Delhi.

The said respondent No.2 through its Director-Ajay Kashyap filed a complaint before the Court of Learned ACMM, Saket, New Delhi under Sections 138/141 of the Negotiable Instruments Act, 1881 against the accused persons, i.e. (1) DD Global Capital Ltd., (2) Sanjay Gambhir, (3) Narender Kumar, (4) Tarun Kumar and (5) Vipin Kumar (petitioner herein). The said DD Global Capital Ltd. is a family holding company which was previously known as DD Township Ltd. and the petitioner is the Additional Director of DD Global Capital Limited w.e.f. 01.02.2011.

3. It is alleged in the complaint that the Director of the respondent No.2/complainant- Company is well known to the Sanjay Gambhir-accused No.2 and the said accused person requested for grant of friendly loan, which request was acceded by extending loan by the respondent No.2/complainant for an amount of Rs. 10.05 crore vide banking transactions dated 12.12.2007, 19.12.2007 and 21.01.2009 for the amount of Rs. 40 lacs, Rs. 40 lacs and Rs. 25 lacs respectively which is duly reflected in the account book of the DD Global Capital Ltd.-accused No.1. The said amount so paid as a friendly loan was agreed and promised to be refundable after one year however, the said amounts have not been repaid.

4. It is further alleged in the complaint that the accused No.5/petitioner herein looks after the day to day working of the accused No.1/company relating to its legal affair, finances, sale of property and other aspects of it. Further, on repeated requests

and demands the accused No.1-DD Township Ltd. issued four post dated cheques, i.e. (i) cheque No. 818258 dated 25.05.2011 of Rs. 30,00,000/-, (ii) cheque No. 818259 dated 05.06.2011 of Rs. 25,00,000/-, (iii) cheque No. 818260 dated 15.06.2011 of Rs. 25,00,000/- and (iv) cheque No. 818261 dated 25.06.2011 of Rs. 25,00,000/-, all drawn on Indian Overseas Bank with its branch at B-226, Okhla Industrial Area, New Delhi with assurance that the cheques would be encashed on its first presentation.

5. Thereafter, when the said cheques were presented for encashment by the respondent No.2/complainant through its banker, i.e. Corporation Bank, GK-II, New Delhi, all the said four cheques were dishonoured vide return memo dated 09.11.2011 with remarks "stop payment". On this the respondent No.2/complainant issued legal demand notice dated 02.12.2011 to the accused persons and when the accused persons failed to repay/refund the respondent No.2/complainant, on 24.01.2012 the respondent No.2/complainant filed a complaint under Sections 138/141 NI Act before the Court of ACMM, Saket, New Delhi being CC. No. 14/2013.
6. Subsequently, vide order dated 24.01.2012 the learned Metropolitan Magistrate issued summons qua the petitioner and the other accused persons.
7. Aggrieved by the said order the petitioner preferred a revision petition being Crl. Rev. P. No.18/13 before the Sessions Court and the learned Sessions Court vide order dated

21.07.2014 dismissed the said revision petition. The petitioner challenged the said order passed by the learned Sessions Court before this Court in CrI. M.C. 5507/2014 and this Court held that the petitioner can raise all the issues before the Trial court at the stage of framing of notice.

8. It is pertinent to mention here that the respondent No.2/complainant on 05.03.2015 moved an application for placing additional documents on record as those documents were not filed initially in the complaint as they were not available with the complainant at the time of filing of the complaint and at the time of pre-summoning evidence.
9. Consequently, vide order dated 26.10.2015 the learned Civil Judge, South East, Saket Court, New Delhi allowed the aforesaid application filed by the respondent no.2/complainant with an observation- *"...that the documents appear to be relevant for the just decision of the case. No prejudice shall be caused to the accused if the documents are taken on record."*

Hence the present petition.

10. The learned counsel for the petitioner has submitted that the petitioner is the accused/respondent before the court below and the court below on filing of the complaint by the respondent No.2/complainant under Section 200 Cr.P.C. for offences under Section 138 read with 141 N.I. Act, summoned the present petitioner vide order dated 24.01.2012. It is further submitted that during the course of the trial, the petitioner moved an application for discharge from the complaint case as there was

no evidence *qua* the present petitioner in the said complaint case. The respondent No.2/complainant preferred not to file any response to the said application. Thereafter, on the next date of hearing, i.e. 17.01.2015, the respondent No.2/complainant took the plea that he wants to file additional documents which is not permissible in law which was opposed by the petitioner. Thereafter on 05.03.2015 the complainant filed an application for taking on record the additional documents. The present petitioner filed detailed reply to the said application that has been allowed by the court below which is contrary to the law and procedure. Reliance is placed upon the judgment in the following cases:-

- i. ***Yahoo! India Pvt. Ltd. vs. State & Anr; 2012 (130) DRJ 656.***
- ii. ***Subodh S. Salaskar vs. Jayprakash M. Shah and Another; (2008) 13 SCC 689.***
- iii. ***S.R. Sukumar vs. S. Sunaad Raghuram; (2015) 9 SSC 609.***
- iv. ***Sanjay Gambhir vs. State and Anr.***
Crl.M.C.No.376/2016 decided on 11.05.2017.

11. The learned counsel for the petitioner further submits that the prayer of the respondent No.2/complainant in the application impugned at para 49 is dated 05.03.2015 wherein the prayer made is to take on record the additional documents and pass appropriate orders thereon. He further submitted that this is not the appropriate stage to take on record the documents

and he has no objection if the said documents is placed on record but not considered at the stage of Section 251 Cr.P.C. and he has objection for taking on record the said additional documents before the stage of Section 251 Cr.P.C. after disclosing his evidence. Reliance is placed on the decision in the case ***Vindyawashini Prasad @ Vidhyawashini Prasad Verma vs. Shashi Kant Verma and Another; 2001 (3) BLJR 2313.***

12. He further submits that there is no stage of taking of the additional documents after passing the summoning order and closing of the procedure under Section 251 Cr.P.C. and the second stage comes only after Section 251 Cr.P.C. and not before that. In the instant case, after disclosing the evidence, the complainant has moved the said application which cannot be permitted to be considered the same at the time of framing of the notice under Section 251 Cr.P.C. He further submits that the said documents have been concealed from the possession of the respondent No.2/complainant at the relevant point of time and later on taking after thought version that those documents are not in their possession at the relevant time, i.e. at the time of filing of the complaint. He further submits that the petitioner has certain rights under the procedure and to take his defence but this right has to be protected by the Court if the same is not protected by the Court then the accused/petitioner will be prejudiced and the respondent No.2/complainant will keep on filing documents and a day will come when whole character of

the respondent No.2/complainant will start give different versions.

13. Mr. Manoj Ohri, learned senior counsel appearing on behalf of the respondent No.2/complainant has submitted that by bringing on record the additional documents, the character of the complaint will not be changed and it will remain the same. He further submits that the plea of the petitioner/accused regarding curtailing his right cannot be taken away in presence of the right of the accused to cross-examine the witnesses. The learned senior counsel has further submitted that the plea of right to curtail –accused can't be taken, i.e. right to cross-examine.

14. The learned senior counsel for the respondent No.2/complainant has further submitted that the accused/petitioner cannot run away on his own. Reliance is placed upon the following judgments:-

- i. ***Rajaram Prasad Yadav vs. State of Bihar; AIR 2013 SC 3081.***
- ii. ***P. Chhaganlal Daga vs. M. Sanjay Shaw; (2003) 11 SCC 486.***
- iii. ***Vijay Kumar vs. State of U.P.; (2011) 8 SCC 136.***
- iv. ***Rajendra Prasad vs. Narcotic Cell; (1999) 6 SCC 2010.***

15. In the instant case the additional documents pertains to a reply filed by the respondent No.2/complainant in the revision petition along with other documents, reply and documents filed

before this Court, the copy of annual balance sheets of the accused company for the year 2010-11, 2011-12 and 2012-13 which were filed by the accused persons on 29.11.2014 and 29.12.2014, and the certificate issued by the Company Secretary in compliance of the statutory provisions of the Companies Act, which indicates that the petitioner was involved and was responsible in dealing with the accounts of the accused company.

16. Since the documents in question are relevant documents for the purpose of determining whether the petitioner was the director who was dealing and responsible for the day to day affairs of the accused company and the documents so produced before the Lower Court would be the documents of the petitioner himself therefore, it is for the petitioner to explain its creation in accordance with the law.

17. The Apex Court in ***Natasha Singh vs. CBI (State); (2013) 5 SCC 741*** has made the following observation:-

"15. The scope and object of the provision is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application Under Section 311 Code of Criminal Procedure must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the

accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred Under Section 311 Code of Criminal Procedure must therefore, be invoked by the Court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as 'any Court', 'at any stage', or 'or any enquiry, trial or other proceedings', 'any person' and 'any such person' clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.

(underlining supplied)

18. Therefore, I find no merit in the contentions of the learned counsel for the petitioner and the judgments relied by him are not helpful in view of the facts and circumstances of the present case.
19. In view of the above made discussions, no infirmity in the impugned order dated 26.10.2015 passed by the learned Civil

Judge, South East, Saket Court, New Delhi in CC. No. 14/2013.

Consequently, the present petition is dismissed having no merit.

20. One copy of this judgment be sent to the concerned Court.

21. All the pending applications (if any) are also disposed of.

22. No order as to costs.

I.S.MEHTA, J

NOVEMBER 03, 2017/sr

नित्यमेव जयते