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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 11th September, 2018

+ CRL.M.C. 649/2016

M/S S.E INVESTMENTS LTD

..... Petitioner

Through: Ms. Manu Bakshi, Adv.

versus

VINOD KUMAR

..... Respondent

Through: Mr. Miraj Kumar Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is the complainant of criminal case (CC No. 2547/2015) in which the respondent is facing trial on accusations of commission of offence under Section 138 of Negotiable Instruments Act, 1881 respecting a cheque statedly issued by the respondent in favour of the petitioner, it upon presentation having returned unpaid, no payment having been made in spite of demand notice served in such wake. It appears that the case had reached the stage of final arguments when on 15.10.2005, the following order was recorded:

“CC No. 2547/15

15.10.2015

Present: Parties with Ld. Counsels.

Part final arguments heard.

Counsel for accused requested for sometime to move appropriate application u/s 311 Cr.P.C. to prove documents filed by the complainant in the arbitration proceedings.

*Request is allowed.
Put up on 03.11.2015.”*

2. The respondent moved an application on 19.10.2015 before the Metropolitan Magistrate seeking summons to be issued to two witnesses named, Giriraj Kishore Sharma and Ashish Aggarwal to be served through Chief Judicial Magistrate, Agra on the ground that it was necessary to examine such witnesses to prove contradictory stand taken by the complainant. In the said application, he made the prayer for process to be issued to the witnesses invoking Section 311 of Code of Criminal Procedure, 1973 (Cr.P.C.) stating that, by order dated 15.10.2015, the trial court had allowed the accused to summon the said witnesses. The application was taken up by the Magistrate on 20.10.2015 and the following order was recorded:

*“CC No. 2547/15
20.10.2015*

*File is taken up today on application filed for summoning
the witness u/s 311 Cr.P.C. by the accused.*

Present: Ld. counsel for accused.

*Submissions heard. Considering the submissions made
in the application, application is allowed. Issue summons
to the witnesses as mentioned in the application on filing
PF and RC within seven days.*

Put up for DE for date already fixed i.e. 03.11.2015.”

3. It is clear from the proceedings on record that no notice of the said application was given to the complainant. The matter was listed before the Magistrate on 03.11.2015 in terms of order dated 15.10.2015. It had been taken up during the interregnum for

permission to summon the said two witnesses in defence for 03.11.2015 by the order dated 20.10.2015. The complainant's counsel, however, showed from his record a copy of the reply submitted by the complainant to his application under Section 311 of Cr.P.C. A copy of the said document, showed at the hearing, has been taken on record. It, itself, shows that the reply was filed lodging protest against such prayer in the application, it bearing the date 08.12.2015, when the order had already been passed.

4. It is clear that misleading and false assertion was made in the application moved on 19.10.2015 for the two witnesses to be examined. There was no permission granted by the Magistrate on 15.10.2015 for any such witnesses to be examined or summoned. The Magistrate, in the given factual background, could and should not have allowed the prayer in the application behind the back of the complainant by order dated 20.10.2015.

5. On being asked, the counsel for the petitioner/complainant submitted that the petitioner continues to oppose the prayer for such witnesses to be summoned and, therefore, is not ready to concede in these proceedings for the prayer in the application to be granted.

6. Given the backdrop, the petition is allowed, imposing costs of Rs.10,000/- on the respondent for application in the above nature having been submitted with false averments. The impugned order permitting summons to be issued at the instance of the respondent is vacated. The application, however, shall be reconsidered and a fresh

order passed, taking into account the opposition of the petitioner, by the trial court after hearing both sides.

7. The petition is disposed of accordingly.

R.K.GAUBA, J.

SEPTEMBER 11, 2018/uj

