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

+ CRL.M.C. 768/2016

A K BAKSHI

..... Petitioner

Through: Mr. B. Anand, Proxy Adv.

versus

STATE & ANR.

..... Respondents

Through: Ms. Meenakshi Dahiya, APP for the
State.

Ms. Naomi Chandra, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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01.08.2018

The petitioners herein had filed a criminal complaint case (CC no. 657/14) against the second respondent alleging offences under Section 138 Negotiable Instruments Act, 1881 qua a certain cheque which had been issued in his favour, which upon presentation was returned unpaid leading to a notice of demand being served by him in spite of which the second respondent would not pay. On the basis of pre-summoning inquiry, the second respondent was summoned as accused. She made an application under Section 143 and 145 of Negotiable Instruments Act, 1881 seeking summoning of the officials of the concerned bank with the bank records and recall of the complainant for he being subjected to cross-examination, her defence being that the cheque in question had given in the hands of the complainant in the course of civil proceedings, she having been induced by him to believe that he had filed his vakalatnama on her behalf, no

vakalatnama having actually been filed by the complainant and, thus, there being no legal liability on her part to pay.

The application for recall of the summoning of the bank officials was declined but the prayer for recall of the complainant was allowed by the Metropolitan Magistrate by order dated 02.01.2016, in which reference is also made to the spirit of Section 311 Cr.P.C., the opportunity for cross-examination of the complainant, in the opinion of the Magistrate, being necessary to ensure that the ends of justice were not defeated. It is the said order which was challenged by the petition at hand under Section 482 Cr.P.C.

In the given facts and circumstances, the resistance of the petitioner, complainant of the case, to the prayer for he offering himself for cross-examination seems to be most unfair and unjust. Having regard to the nature of pleas raised in defence by the second respondent, the view taken by the Magistrate in the impugned order seems to be just, fair and proper. The opportunity to cross-examine the opponent or his witnesses is a valuable right in a criminal prosecution, the objective whereof is to reach out to the truth. It may be that in the prosecutions under Negotiable Instruments Act, 1881, a different procedure ordinarily applies. But then the law permits, where the occasion so demands, for such opportunity to be granted to the accused.

The petition being wholly frivolous is dismissed.

R.K.GAUBA, J

AUGUST 01, 2018

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