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

+ CRL.M.C. 1787/2018 & CrI.M.A. 31512/2018

KABIR KUMAR MUSTAFI

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Advocate with
Mr. Mayank Sharma and Mr. Amit
Bagai, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI & ANR.... Respondents

Through: Ms. Manjeet Arya, APP for State.
Mr. Rajnik Nanda and Mr. Shayam S.
Sharma, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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06.09.2018

During the course of hearing, learned senior counsel for the petitioner has pressed only prayer 'a' of this petition. Prayer 'a' reads as under:-

“ (a) Pass orders setting aside the impugned order dated 26.02.2018 and allow the application under Section 145(2) of NI Act, filed on behalf of the accused.”

Respondent No.2 filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (“the Act” for short) against M/s Prospect Management Pvt. Ltd. Petitioner was impleaded as accused no.1 being director of the company and also as the drawer of the cheque in question. Notice under Section 138 of the Act was served on the petitioner on 4th September, 2017 to which petitioner pleaded not guilty and claimed trial.

Petitioner also raised defence in the following manner:-

“ The company namely M/s Prospect Advisory and Management Pvt. Ltd. (Accused in previous complaint wherein MOU Ex.CW1/G was executed) was being run by my son. The complainant put pressure upon me and my son and therefore, I issued the cheque of ₹ 50 lacs in good faith but the complainant was having the knowledge that I do not have the funds but complainant has taken cheque just to show the transaction to the bank and complainant has assured that the cheque of ₹ 50 lacs shall never be presented, however the complainant presented the cheque and filed the case wherein the said agreement/MOU was executed. At the time of issuance of cheque in question, I had specifically told the complainant that I do not have the funds and I am attending the proceedings in good faith and I will be happy to give the money if I have. I am a school teacher and I was trying to set up a new school but the project could not be started till date as the money was to come from Church which has not been received till date. Even at the time of issuance of cheque in question I have made clear to the complainant that there are chances that I may receive the amount within six months or I might not receive the same as there is no guarantee regarding the commencement of the project. I have issued the cheque in question in good faith and with the hope that the project will be commenced.”

Despite the specific defence taken by the petitioner his opportunity to cross examine CWs was closed on the ground that petitioner had not raised any such defence which could require cross examination of witnesses. Petitioner filed an application under Section 145(2) of the Act, which has been dismissed by the Trial Court vide order dated 26th February, 2018. Trial Court has held that opportunity of petitioner to cross

examine of CWs stands closed vide order dated 4th September, 2017, which could not have been recalled.

Being aggrieved by the impugned orders passed by the Trial Court, petitioner has filed this petition under Section 482 Cr.P.C.

I am of the view that order of the trial court is perverse and has resulted in miscarriage of justice. Petitioner has raised certain defences in response to the notice served on him, to which he has pleaded not guilty. Cross examination of CW1 is thus necessary on the defences taken by the petitioner.

Learned counsel for respondent No.2 has contended that the cheque in question was issued during the pendency of the earlier complaint under Section 138 of the Act. Cheque was issued pursuant to the MOU executed between the complainant and accused persons including the petitioner. The cheque was issued and handed over in Court. In view of the settlement, earlier complaint was withdrawn on receipt of the cheque. As per the MOU, respondent has legal right to file the complaint on dishonour of the cheque in question. Learned counsel submits that no pressure was put nor petitioner represented that sufficient amount was not there in his account. I need not to go into the allegations and counter allegations of the parties. Veracity of the allegations and counter allegations has to be tested during the trial. Learned counsel submits that only intention of the petitioner is to delay the disposal. As regards delay is concerned, in my view, respondent no.2 can be compensated in terms of costs.

For the foregoing reasons, impugned order is set aside. Petitioner is permitted to cross examine CW(1), subject to costs of ₹ 50,000/- to be paid by the petitioner to respondent no.2. It is ordered that only one opportunity

shall be granted to the petitioner. Petitioner shall not be allowed to seek unnecessary adjournment.

Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

Dasti.

A.K. PATHAK, J.

SEPTEMBER 06, 2018
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