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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 28th August, 2018

+ CRL.M.C. 4006/2016

SIDDHARTH CHANDRA

..... Petitioner

Through: Mr. Manish Pratap Sigh, Ms.
Rukmini Mukherjee and Mr. Sumeet Kaul,
Advocates

versus

STATE OF NCT & ANR

..... Respondents

Through: Mr. Mukesh Kumar, APP for the
State

Mr. Rajiv Aggarwal, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is facing prosecution in a criminal case (CC no.12022/1/10) registered on the criminal complaint of the second respondent (complainant). He had been summoned in the said case alongwith certain other accused including the company described as M/s. Intercon Infotech Pvt. Ltd. in which he was a director and an authorized signatory at the relevant point of time. The criminal case entered the stage of trial upon notice under Section 251 of the Code of Criminal Procedure, 1973 (Cr.PC) being served on the petitioner and other co-accused on 12.08.2011 stating the accusations constituting offence under Section 138 of the Negotiable Instruments Act, 1881, this respecting the cheque bearing no.055959 dated 01.10.2010 for a

sum of Rs.1,10,04,166/- drawn on Union Bank, Nehru Place Branch, Delhi, the said cheque statedly having been returned with remarks, “*payment stopped by drawer*”, no payment having been made inspite of legal notice of demand dated 01.11.2010.

2. When the notice under Section 251 Cr. PC was issued and served on the petitioner, he was called upon to state his plea. He pleaded not guilty and claimed trial. The Metropolitan Magistrate then called upon him to explain as to what he wanted to say in his defence in reply to which a very vague answer came to be recorded, it reading “*I do not want to lead any defence*”. It is pointed out that similar answers were also recorded in reply to similar notice to co-accused Pooja Chandra on the same date.

3. The petitioner, through counsel, thereafter had moved an application under Section 145 (2) of Negotiable Instruments Act, 1881 seeking opportunity for cross-examination of the complainant witnesses. This application was declined by the Metropolitan Magistrate by order dated 14.05.2015 for the reasons that no specific defence had been indicated. The petitioner challenged the above mentioned order unsuccessfully before the court of Sessions by Criminal Revision no.23/2015, which was dismissed on 05.12.2015. The said orders are challenged by the petition at hand.

4. At the hearing, the counsel for the petitioner explained that the defences of the petitioner are that the cheque involved in the criminal complaint was issued by way of security; there was a running account between the complainant and the accused company of which there has

been no reconciliation; and that no demand notice was received after the cheque was presented and returned unpaid.

5. The right of the accused to cross-examine the witnesses of the prosecution or the complainant is a valuable right. The said exercise aids and assists the court in reaching the truth of the matter. In the given facts and circumstances where the default was primarily on the part of the defence counsel in making out a proper application under Section 145(2), the petitioner ought not suffer. The least that the Metropolitan Magistrate could have done while considering the application which was dismissed by order dated 14.05.2015, was to ascertain as to what defences the accused (i.e. the petitioner) was raising. In view of the aforementioned defences, it is deemed fit and proper that the opportunity for cross-examining the complainant and his witness(es) be afforded to the petitioner.

6. Thus, the petition is allowed. The Metropolitan Magistrate is directed to fix an appropriate date of hearing when the complainant shall be obliged to produce his witness(es) and tender them for cross-examination by the petitioner.

7. The petition is disposed of in above terms.

R.K.GAUBA, J.

AUGUST 28, 2018

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