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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 16th November, 2018

+ CRL.M.C. 2574/2018 and Crl.M.A.9134-9135/2018

ARVINDER SINGH BHATIA

.... Petitioner

Through: Mr. Asutosh Lohia, Advocate
with Mrs. Archana Saxena,
Adv. Ms. Radhika Nair &
Mr. Rohan Dewan, Advocates

versus

ASHOK KUMAR KHATTAR

.... Respondent

Through: Mr. Narender Mann, SPP with
Mr. Manoj Pant, Advocate.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondents had instituted a criminal complaint case (presently registered as CC No.536410/2016) in the year 2000 alleging offence punishable under Section 138 of the Negotiable Instruments Act, 1881 having been committed by the petitioner on the allegations that he had issued two cheques each of Rs.5 lacs drawn on Bank of India which, upon presentation, were returned unpaid and further that in spite of the notice of demand the petitioner had failed to make payment of the value of the said cheques.

2. The pre-summoning inquiry into the said criminal complaint remained pending for almost sixteen years. By order dated 06.10.2016, the Metropolitan Magistrate found *prima facie* the offence

to be made out and, thus, issued process against the petitioner summoning him to answer accusations for the said offence under Section 138 of the Negotiable Instruments Act, 1881.

3. The petitioner challenged the above said order in the court of Sessions invoking its revisional jurisdiction by criminal revision No. 380/2017. The said petition, however, was dismissed by the said court on 24.03.2018. Thereafter, the petitioner has come up to this court invoking the inherent power and jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), submitting that the proceedings in the above mentioned case are in the nature of abuse of the process of law and ought to be quashed.

4. Against the above backdrop, question arose as to whether the petitioner having availed of the remedy of revision should be allowed to have recourse to the petition at hand as a substitute for virtually a second revisional challenge or scrutiny which is clearly barred under Section 397 (3) Cr.P.C.

5. This Court in an almost similar fact-situation, taking note of the decisions of the Supreme Court reported as *Krishnan Vs. Krishnaveni*, (1997) 4 SCC 241; *Rajinder Prasad Vs. Bashir*, (2001) 8 SCC 522 and *Kailash Verma vs. Punjab State Civil Supplies Corporation & Anr.*, (2005) 2 SCC 571 and following similar view taken by a learned single Judge of this Court in *Surender Kumar Jain vs. State & Anr.*, ILR (2012) 3 Del 99 in absence of a special case being made has earlier declined to interfere by the ruling (dated 03.07.2018) in CrI.M.C. 164/2018 *Ajay Maini vs. The State Govt. of NCT of Delhi &*

Ors. in exercise of its extraordinary jurisdiction under Section 482 Cr.P.C.

6. Even otherwise, there is no merit in the contention raised by the petitioner. It does appear that the petitioner having instituted the criminal case in 2000 was not very diligent or vigilant in promptly prosecuting the same. The copy of the proceedings recorded since beginning till the date of summoning order do show neglect at several stages on the part of the complainant. But then, it is also discernible from the said proceedings that the case remained pending and stood adjourned from time to time on a large number of dates for reasons that cannot be attributed to the complainant.

7. The submissions of the petitioner that the original cheques were not brought on record during pre-summoning inquiry may be correct. This is what was recorded even in the proceedings on 19.01.2006 by the Metropolitan Magistrate, the explanation of the complainant being that the cheques had been “*lost*”. The complainant had submitted that for this reason he wanted to bring in evidence of the concerned Bank. The Metropolitan Magistrate gave the opportunity to that effect and, thus, Pawan Kumar (CW2), an official of the Bank was examined in the pre-summoning inquiry, he having proved the certified copies of the two cheques. Whether or not such certified copies can be used as “*evidence*” at the trial which is to follow is a question which, in the given facts and circumstances, ought to be left to be considered and adjudicated upon by the concerned court.

8. There is no merit in the contention of the petitioner that the opportunity for adducing pre-summoning evidence having once been closed by order dated 28.07.2008, it was beyond the domain of the Metropolitan Magistrate to give renewed opportunity for such purpose, as was allowed on 06.10.2016. This cannot give rise to the argument that the Metropolitan Magistrate had exercised power of “review” which was not available to the criminal court. On the contrary, the provision contained in Section 311 Cr.P.C. confers a wide jurisdiction on the criminal court to permit such additional opportunity for material witnesses to be examined “*at any stage of any inquiry, trial or other proceeding*”.

9. The petition is devoid of substance and is dismissed *in limine*. This disposes of the pending applications as well.

R.K.GAUBA, J.

NOVEMBER 16, 2018

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