

\$~ 14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 3180/2018 & CRL.M.A. 11157/2018**

VIKAS ARORA @ VIKAS MATTA Petitioner
Through: Mr. Lalit Bhardwaj with Mr. Jatin
Anand Dwivedi, Advocates.
versus

ANURAG SHARMA Respondent
Through: Mr. K.S. Rana, Advocate for
respondent.
Mr. Arun Kumar Sharma, APP for
State.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER
% **04.07.2018**

The petitioner is facing trial in the court of Metropolitan Magistrate, (C-02), Delhi, Tis Hazari Courts, in complaint case no.535752/2016 instituted by the respondent for offence under Section 138 of Negotiable Instruments Act, the matter involving the cheque of the value of Rs.5 lakhs stated to be given as for refund of loan of May, 2014. The cheque was returned unpaid on 24.02.2015 and the complaint was filed on 27.04.2015 after the petitioner allegedly failed to respond to the notice of demand.

The case was at the stage of complainant's evidence on 23.11.2017 to the knowledge of the petitioner and the counsel. On 23.11.2017, the defence counsel was not present and the request for adjournment on the ground that he had not returned from abroad was

declined and the right to cross-examine the complainant's witness was closed.

The application under Section 311 of the Code of Criminal Procedure, 1973 for recall of the witness was moved on 09.04.2018 after the statement of the petitioner as accused under Section 313 Cr.P.C. had been recorded on 09.03.2018. The prayer for recall of the witness having been declined, the petitioner has approached this Court by the petition at hand invoking the jurisdiction under Section 482 Cr.P.C. and Article 227 of the Constitution of India.

Indeed, the facts and circumstances of the case as shown by the proceedings before the trial court do reveal an evasive conduct. There is no explanation worth the name as to why the counsel having returned on 23.11.2017, the prayer for recall of the witness could not have been made immediately. The endeavour appears to be to cause delay, to the extent possible, to the final adjudication. Be that as it may, since the right to cross-examine the witness of the complainant is a valuable right, for complete and effectual justice, it is deemed proper that it be revived in this case but subject to payment of Rs.30,000/- as cost to be paid by the petitioner to the respondent as a pre-condition on the date next fixed by the trial court. Ordered accordingly.

Needless to add, should the petitioner and his counsel fail to cooperate with trial any further or to abide by the above mentioned condition or make any endeavour to cause further delay, the Magistrate will have the liberty to close the opportunity once again.

Needless further to add the right to cross-examine the complainant's witness having been re-opened, though subject to above noted conditions, the petitioner will be offered another opportunity to lead defence witness when the case reaches the appropriate stage.

The petition and the application filed therewith stand disposed of in above terms.

R.K.GAUBA, J

JULY 04, 2018
srb