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

+ CRL.M.C. 3535/2018 and Crl.M.A.28022-28023/2018

ANIL KUMAR TOBRIA

..... Petitioner

Through: Mr. Ashok Tobria, Advocate with
Ms. Sunita, Advocate

Versus

NARESH KUMAR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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19.07.2018

The petitioner is facing criminal prosecution in complaint case (CC No.5004205/16) on the allegation of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 on the complaint of the respondent. He brought this petition praying for inherent jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) to be exercised to set aside and vacate the orders dated 20.09.2017 and 21.05.2018 whereby his applications under Section 311 Cr.P.C. moved one after the other seeking recall of the complainant (CW1) for cross-examination was declined.

Having heard the counsel for the petitioner and having gone through the record, this court finds no error or illegality in the view taken by the court below.

The impugned orders themselves bring out, and the counsel for the petitioner has no answer thereto, that the petitioner and his counsel have been guilty of causing deliberate delay in the process. The case was listed for cross-examination of the complainant witness on 06.06.2017 when adjournment was taken on personal ground of the counsel. On that date the magistrate was indulgent and granted the request. On the next date, *i.e.*, 08.08.2017 the court was made to wait till post-lunch session but, pass over having been taken by the counsel, in the later part of the day neither the petitioner nor his counsel would appear, this resulting in closure of the opportunity.

The application under Section 311 Cr.P.C. was dismissed for these reasons by order dated 20.09.2017. No challenge was brought to the said order. Knowing fully well that the criminal court would not have the power of review, another similar application with similar prayer was moved which was also dismissed by order dated 21.05.2018. With such recalcitrant and elusive conduct of the petitioner, no good grounds are made out for this court to grant any relief.

The petition and the applications filed therewith are dismissed with costs of Rs.10,000/-, to be deposited with Delhi High Court Legal Services Committee within a week.

R.K.GAUBA, J.

JULY 19, 2018

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