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

+ CRL.M.C. 3520/2017

SMT MANJU AGARWAL & ORS Petitioners

Through Mr. Puneet Goel, Adv

versus

SHASHI GUPTA Respondent

Through Counsel for Respondent
(appearance not given)

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **08.02.2018**

Respondent filed complaint under Section 138 NI Act against the petitioners. After recording of pre-summoning evidence, petitioners were summoned. Notice under section 251 CrPC was framed against the petitioners on 22nd November, 2013 to which they pleaded not guilty.

Complainant was examined and cross examined in May, 2014. Thereafter, statements under Section 313 CrPC were recorded. Petitioners were also accorded opportunity to lead defence evidence which was availed. Petitioners lead evidence in defence.

Petitioners changed their counsel and only thereafter an application under section 311 Cr.P.C. was filed for recalling the CW-1 in the witness box for further cross-examination, on the ground that earlier counsel had not properly examined the complainant, in as much as various relevant questions which were relevant to the root of the matter, were not put to the witness and as such re-examination of CW-1 was necessary. In the application it was

also alleged that petitioners had never issued the cheque in question to discharge their liabilities. Agreement to Sell, Loan Agreement, GPA etc. were forged and fabricated to cause wrongful loss to the petitioners. It was further alleged that signatures were obtained on various blank and printed papers on the pretext of granting of loan.

Learned Metropolitan Magistrate has dismissed the application vide order dated 6th September, 2016, which is impugned by way of the present petition under Section 482 Cr.P.C.

Learned Metropolitan Magistrate has held that the witness could not be recalled for further cross examination merely because new counsel had been engaged, who was not satisfied with the line of cross-examination already done. Reliance was placed on '**Raminder Singh vs. Sate, Crl. M.C. 8479/2006 MANU/DE/0339/2008**' wherein it was held that Section 311 Cr.P.C. does not permit a court to go into the aspect as to whether the material portions of the evidence on record has been put to the witness in cross examination to elicit their contradictions. If the court is required to perform such an exercise every time an application is filed under Section 311 then not only would it be pre-judging what according to it are 'material portions' of the evidence but it would end up reappraising the entire cross-examination conducted by a counsel to find out if the counsel had done a competent job or not. This certainly is not within the scope of the power of the trial court under Section 311 Cr.P.C. No judgment has been pointed out by the learned counsel for the petitioner in support of such a contention. Even on a practical level it would well nigh be impossible to ensure expeditious completion of trials if trial courts were expected to perform such an exercise at the conclusion of the examination of prosecution witnesses

every time.

In this case CW-1 had been examined by the earlier counsel at length thereafter, statement under section 313 CrPC was recorded. Opportunity was granted to the petitioners to lead defence evidence and in fact, the same was led. It is noted the pleas taken in the application was not taken as defence in response to the notice under Section 251 Cr.P.C. The defence taken in response to notice under section 251 CrPC by the petitioners is that respondent was not the holder in due course of the cheque, which was given as security against the loan and it was settled that complainant (respondent) would give the cheque in question as the accused persons (petitioners) had already paid the cheque amount to the complainant.

Even otherwise, application is vague on material aspects. CW-1 was cross examined at length. It appears that the application has been filed only to drag on the matter.

Petition is dismissed. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J

FEBRUARY 08, 2018

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