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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 31st August, 2018

+ CRL.M.C. 3551/2017 and Crl.M.A.14453/2017

MRS KARUNA SINGH

..... Petitioner

Through: Mr. Maninder Singh, Advocate with
Mr. Abhishek Swaroop, Ms. Smriti
Asmita, & Mr. Naman Bagga,
Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr. Mukesh Kumar, APP for the State
Mr. S.S. Jauhar, Advocate with
Mr. Jai Prakash, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had instituted a criminal complaint (CC No.215/1/2010) on 24.09.2004 against the second respondent alleging offence under Section 138 of the Negotiable Instruments Act, 1881 having been committed on account of non-payment inspite of notice of demand issued and statedly served in the wake of dishonor of a cheque No.544936 dated 01.09.2004, drawn against account of the second respondent (the accused) with Bank of India, Okhla Industrial Area, Branch, New Delhi. The said cheque for Rs.25 lacs had statedly been issued in the wake of an Undertaking which had been executed on 10.04.2004 duly attested by a Notary Public, as consideration for transfer of five hundred equity shares of a company named Moral

Properties Private Limited by the petitioner (the complainant) and members of her family in favour of the accused.

2. It is stated that on the basis of preliminary inquiry, process was issued summoning the accused to face criminal proceedings. The trial commenced with service of notice under Section 251 of the Code of Criminal Procedure, 1973 (Cr.P.C.) on 15.12.2005 in answer to which the accused had pleaded not guilty. It appears that the recording of the evidence of the complainant, who appeared as witness on her own behalf (as PW-1), took almost eight years to conclude, the cross-examination being an extensive one, spread over numerous dates. The statement of the accused under Section 313 Cr.P.C. was recorded, on the close heels whereof the petitioner (the complainant) moved an application on 03.03.2017 invoking the jurisdiction of the trial court under Section 311 Cr.P.C. seeking permission to summon one Narender Sharma son of Shri R.S. Sharma as additional witness. The said application was resisted by the accused which was eventually dismissed by Metropolitan Magistrate by order dated 17.08.2017.

3. The present petition was filed invoking the inherent power of this court under Section 482 Cr.P.C. challenging the aforesaid order, the prime argument raised being that the examination of the said additional witness is essential for the just decision of the case and denial of such liberty would lead to miscarriage of justice. The petitioner places reliance on *Mohanlal Shamjisoni vs. Union of India & Anr.*, 1991 Supp (1) SCC 271; *Rajendra Prasad vs. Narcotic Cell*, (1999) 6 SCC 110; *Shailendra Kumar vs. State of Bihar & Ors.*,

(2002) 1 SCC 655; P.Chhaganlal Daga vs. M. Sanjay Shaw, (2003) 11 SCC 486; and U.T. of Dadra & Nagar Haveli & Anr. vs. Fatehsinh Mohansinh Chauhan, (2006) 7 SCC 529.

4. The respondent accused reiterates her opposition to the prayer of the petitioner (complainant).

5. Both sides have been heard at length. The record has been perused.

6. It has been demonstrated before this court that aside from the criminal case, the parties have been locked in litigation also before the civil court and company court. Though the complaint only referred to the Undertaking dated 10.04.2004, reference has come even in the proceedings before the trial court in the course of recording of evidence to the effect that aside from the said Undertaking dated 10.04.2004 where-under the cheque was handed over to the complainant, another document styled as Memorandum of Understanding (MoU) was also executed on the same date, *i.e.*, 10.04.2004, both the complainant and the accused herein (besides others) being party to the same. In fact, perusal of the copy of the Undertaking shows the same also referred to the execution of the said MoU of 10.04.2004. The said documents, if read together, would indicate that the dispute had arisen between the parties over the control of the company Moral Properties Private Limited. As per the settlement represented by the MoU, and the Undertaking, the complainant appears to have agreed to give up her control, the relatives on her side having also similarly agreed to give up their

respective control over the company, and pursuant to this, to transfer the shares in the company held in their respective names in favour of the accused. While the complainant insists that the shares were actually transferred by execution of share transfer forms and of a Memorandum about handing over/taking over, the version of the accused has been that no such transfers actually took place. Questions of fact in this regard have been subject matter of litigation before the civil court and the company court.

7. The respondent places reliance on *Commissioner of Income-Tax, Madurai vs. M.Ramaswamy*, 1983 SCC OnLine Mad 11; *Rajagiri Rubber and Produce Co. Ltd. vs. Commissioner of Income-Tax*, 1993 SCC OnLine Ker 502; *Shri Shailendra Babu & Anr. vs. Assistant Commissioner of Income Tax & Anr.*, 2016 SCC OnLine ITAT 10955, and *Howrah Trading Co. Ltd. vs. Commissioner of Income Tax, Central, Calcutta*, 1959 Supp (2) SCR 448, arguing that the evidence through additional witness would be unnecessary and irrelevant, the shares not having been transferred, there being no physical handing over.

8. Against the above backdrop, the petitioner relies, *inter alia*, on the pleadings of the accused in her application under the Companies Act in the course of Company Petition No.52/2004 wherein, transfer of the shares by the complainant was alluded to, though the grievance raised also being that the documents and books of accounts and business had not been handed over as had been agreed upon. The complainant also seeks to point out that Narender Sharma, the person sought to be summoned as additional witness, was an attesting witness

both to the Undertaking and to the MoU. She further seeks to point out from the documents that immediately after execution of the share transfer forms by the complainant in favour of the accused, the accused, in turn, had transferred the said stock in favour of Narender Sharma by executing similar share transfer form(s).

9. It has been pointed out that in answer to the notice under Section 251 Cr.P.C. served on 15.12.2005, the accused simply pleaded not guilty, not elaborating the defence as was requisite and expected. It is submitted that against the above backdrop, the complainant has been taken by surprise by the plea in the course of statement under Section 313 Cr.P.C. raised by the accused stating that the cheque in question was a “*blank singed cheque*” and further that the complainant had “*never transferred any shares*” in favour of the accused. In fact, it is also pointed out that after denying the receipt of the legal notice of the demand, the accused has also claimed in statement under Section 313 Cr.P.C. that there was no question of making payment “*as no shares were transferred*”.

10. The thrust of the argument of the counsel for the accused in resisting the prayer under Section 311 Cr.P.C. has been that the shares certificate in physical form were never handed over and that the theory of transfer of shares by the complainant is false and fabricated. The court, at this stage, is not expected to adjudicate on the issue of fact that arises from such submissions.

11. In the given backdrop, this court is of the view that it is essential for just decision of the case to allow the prayer for Narender Sharma son of Shri R.S. Sharma to be summoned as an additional

witness since he was signatory to both the crucial documents, *i.e. the Undertaking and the MoU*, both dated 10.04.2004 and since there are documents purporting to show that the shares held in the name of the complainant and members of her family were eventually transferred in his favour, possibly by the accused. His testimony would be necessary to reach the truth of the matter concerning the crucial question as to whether the amount represented by the cheque was a liability due from the accused unto the complainant on the date the said instrument purports to have been issued.

12. The case law referred to by the accused is of no relevance to the issue required to be addressed by this court.

13. For the above reasons, the petition is allowed.

14. The impugned order dated 17.08.2017 of the Metropolitan Magistrate is set aside. The prayer made in the application under Section 311 Cr.P.C. is granted. On steps being taken, the Metropolitan Magistrate shall issue necessary process to secure the presence of additional witness Narender Sharma son of Shri R.S. Sharma and arrange for he to be examined by the complainant as a witness on a date to be fixed by the trial court. This, needless to add, would be followed up by further proceedings in accordance with law.

15. The petition stands disposed of in above terms. This disposes of the pending application as well.

R.K.GAUBA, J.

AUGUST 31, 2018

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