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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 02nd August, 2018

+ CRL.M.C. 3788/2015 and Crl. M.A. 13429/2015

ANSAL BUILDWELL LTD Petitioner
Through: Mr. Vijay Aggarwal and Mr.
Shailesh Pandey, Advocates
versus

RAKESH BEDI Respondent
Through: Mr. Azhar Qayam, Advocate

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

ORDER (ORAL)

1. The criminal complaint case (CC no.1146/1) from which the present proceeding arise was initiated by the respondent (complainant) on 19.07.2002 alleging offences punishable under Section 138 of the Negotiable Instruments Act, 1881 having been committed, *inter alia*, by the petitioner. It continues to be hanging fire in the court of the Metropolitan Magistrate till date. At the stage of trial, objection was taken on behalf of the accused (petitioner) as to the affidavit of the complainant on which he was being called upon to cross-examine. The petitioner (accused) would refer to the affidavit that had been submitted in 2002 to point out that its contents were different from another affidavit of the complainant that had been tendered in 2007, he expressing inability to cross-examine on such account. The

Magistrate observed in the proceedings recorded on 27.05.2015 that similar objection had been raised on the previous date, it having been settled, the accused being obliged to cross-examine the complainant on the basis of affidavit that had been pressed as evidence at the trial i.e. after summoning and in the wake of notice under Section 251 Cr. PC. The Metropolitan Magistrate, by his order dated 27.05.2015, held that the affidavit of 2002 shall be read in evidence at the stage of post-summoning evidence as is permissible in law.

2. The petitioner challenged the above-said order by approaching the court of Sessions invoking its revisional jurisdiction by filing petition (Crl. Revision No.26/2015) which was dismissed by order dated 18.08.2015.

3. The petition at hand was filed invoking the inherent jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC) to bring a fresh challenge to the order of the Metropolitan Magistrate.

4. Against the above backdrop, question arose as to whether the petitioner having availed of the remedy of revision should be allowed to take 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 extraordinary jurisdiction under Section 482 Cr.P.C.

6. The counsel for the petitioner conceded at the hearing that the affidavit submitted in the pre-summoning inquiry in a case relating to offence under Section 138 of the N.I. Act can be used as evidence at the trial after service of notice under Section 251 Cr. PC. In this view of the matter as well, there is no merit or substance in the contentions raised. The petitioner may avail of the subsequent affidavit of 2007 for bringing out contradictions, if there are any, during cross-examination. It, however, is not his domain to insist that the subsequent affidavit only be treated as examination-in-chief.

7. There are no special circumstances made out in the case at hand for the revisional court's view to be disturbed.

8. The petition and the application filed therewith are dismissed.

R.K.GAUBA, J.

AUGUST 02, 2018

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