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

+ CRL.M.C. 4351/2015 & CRL. M. A. 15394/2015

M/S VIDEOCON INDUSTRIES LTD

..... Petitioner

Through: Mr. Rajneesh Sharma and
Ms. Akanksha Sharma, Advocates

versus

STATE & ANR

..... Respondents

Through: Mr. Akshai Malik, APP for the State.
Mr. Rakesh Gupta and Mr. Om
Prakash Gupta, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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19.09.2018

The petitioner is the complainant in the case bearing CC No. 707/2012 which is pending on the file of the Metropolitan Magistrate, the second respondent being the accused. The accusations of the complainant against the accused in the said case concern offence under Section 138 of the Negotiable Instruments Act, 1881 arising out of alleged non-payment pursuant to notice of demand issued and served in the wake of dishonour of cheque no. 0057218 purported to be bearing date 18.06.2011 for the sum of Rs. 1 lac. Having regard to the statement under Section 313 of Code of Criminal Procedure, 1973 which was recorded on 03.09.2014, it appears the accused has taken the position that the cheque was handed

over in 2008 for payment of goods supplied but it had been misused by making alteration so as to appear to have been issued in the year 2011, this sought to be demonstrated, *inter alia*, by reference to certain cheque leaves immediately preceding the said cheque and at least one (being no. 0057219) immediately following the said cheque. It is the case of the accused that cheque no. 0057219 was issued on 18.06.2008.

Against the above backdrop, the accused had made a prayer for the cheque in question to be sent to Forensic Science Laboratory for its opinion about the alteration and, as is argued, as to the age of the ink which had been used. The Metropolitan Magistrate, by her order dated 29.01.2015, declined the said request observing that no alteration was noticeable on the cheque leaf. The revisional Court which was approached by petition (Criminal Revision no. 13/2015), however, held to the contrary, by its order dated 16.09.2015, directing the trial court to send the cheque to the Forensic Science Laboratory at Rohini (FSL) for expert opinion.

Aggrieved by the directions of the revisional Court, the present petition was filed by the complainant, the prime argument being that the opinion of the Magistrate that there was no apparent alteration in the date and that the entire design of the accused is to cause delay.

Having regard to the abovementioned facts and circumstances, the right of the accused to lead evidence in support of his defence cannot be denied. Questions of fact have been raised with regard to which there is some material already available and, in this context, the

date of the other cheques immediately preceding and at least the one following will have to be kept in mind. At the same time, in the opinion of this Court, it was not correct on the part of the revisional Court to refer the matter to FSL which is a State agency. It cannot be lost sight of that FSL, the State agency, is already over-burdened with cases arising out of the State investigations or prosecutions where its opinion is urgently required. In a case of the present nature, which is a private dispute, accused may avail of the opinion of a private forensic expert of his choice and present it before the Trial Court.

Thus, the impugned order of the revisional Court is modified. Instead of the matter being sent to FSL Rohini, the accused will have the liberty to engage a forensic expert and obtain an opinion and present it for consideration as defence evidence before the Metropolitan Magistrate. For such purpose, he shall be given a reasonable opportunity, which however, should not be – given the old pendency of the case – more than two months from the date next fixed before the Trial Court.

With above modification, the petition is disposed of.

R.K.GAUBA, J

SEPTEMBER 19, 2018

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