

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Order: January 31, 2019

+ CRL.M.C. 4446/2017
GIRISH KR KHANDUJA Petitioner
Through: Mr. H.N. Pandey, Advocate
Versus
ANIL MALIK Respondent
Through: Counsel (*Appearance not given*)

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

Impugned order of 26th August, 2017 rejects petitioner's application under Section 311 of Cr.P.C. by observing that despite ample opportunity given, petitioner has not filed the application in time and now petitioner cannot be allowed to file the application to fill up the lacuna.

Petitioner's counsel submits that due to change of jurisdiction, previous counsel of petitioner could not properly handle the case and so, application under Section 145(2) of Negotiable Instruments, Act, 1881 could not be filed and the complainant has not been cross examined at all and his cross examination is essential for just and proper adjudication of the case.

It is submitted by petitioner's counsel that defence of petitioner is that the jewellery in question was not purchased from complainant and the cheque so given to the respondent was security cheque to obtain loan from him and on these lines, respondent/ complainant needs to be cross examined.

On the other hand, learned counsel for respondent/complainant supports the impugned order and submits that final arguments on behalf

of respondent have already been heard by the trial court and the matter is coming up for hearing before the trial court in March, 2019 for petitioner's argument and so, no case for allowing petitioner's application under Section 311 of Cr.P.C. is made out.

Upon hearing and on perusal of the impugned order, I find that delay by itself is not a valid ground to reject application under Section 311 of Cr.P.C., as it has to be seen whether the cross examination of the complainant is essential for just adjudication of the case or not. In the instant case, complainant has not been cross-examined at all and even application under 145(2) of Negotiable Instruments Act, 1881 has not been filed. Apparently, this is due to mishandling of the case by previous counsel for petitioner, for which petitioner cannot be made to suffer. For the delay occasioned, petitioner can always be put to terms.

Considering the fact that petitioner's defence is required to be put to the complaint, impugned order is hereby set aside and petitioner's application under Section 311 of Cr.P.C. is allowed, subject to cost of ₹10,000/- to be paid by petitioner to respondent before the trial court at the time of cross examination of the respondent/complainant.

In the light of the aforesaid, this petition is accordingly disposed of with direction to trial court to expedite the trial of this complaint case.

Dasti.

(SUNIL GAUR)
JUDGE

JANUARY 31, 2019
p'ma