

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

CRL.M.C. 5946/2019 and Crl.M.A.No.40865/2019

Reserved on : 20.01.2020

Date of Decision : 22.01.2020

IN THE MATTER OF:

SH. RAVINDER SINGH RAGHAV

..... Petitioner

Through: Mr.Abhitosh Pratap Singh,
Advocate.

versus

SH. LOKESH UPADHYAY

..... Respondent

Through: Mr.Raj Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. By way of present proceedings, the petitioner has assailed the order dated 20.08.2019 passed by Addl. Sessions Judge in CR No.51/2019 vide which the revision petition filed on behalf of the petitioner, challenging the closure of petitioner's right to cross-examine the respondent/ complainant, was dismissed.

2. The respondent/complainant instituted a complaint case under Section 138 of Negotiable Instruments Act against the present petitioner for dishonour of two cheques of Rs.15 lacs each. After pre-summoning evidence of the complainant, the petitioner was summoned vide an order dated 17.09.2014.

3. The Trial Court on 20.04.2017 framed notice under Section 251 Cr.P.C. to which the petitioner pleaded not guilty and claimed trial.

Thereafter, the case was listed on multiple dates for cross-examination of the complainant, however, the petitioner/accused did not file any application under Section 145(2) of the Negotiable Instruments Act. Ultimately, the Trial Court vide order dated 10.08.2018 closed the petitioner's right to cross-examine the complainant.

4. The petitioner impugned the above-mentioned order dated 10.08.2018 through a revision petition filed on 24.07.2019 before the Sessions Court. It is relevant to note that the Sessions Court noted that the delay of 8 months was not properly explained by the petitioner/accused in the accompanying application filed under Section 5 of the Limitation Act. The impugned order has also noted that sufficient opportunities were given to the petitioner to move application under Section 145 (2) of Negotiable Instruments Act. It was noted that the petitioner/accused was granted about 16 months in total to move the aforesaid application. In fact, on 01.03.2018, an opportunity was granted subject to payment of costs of Rs.1,000/-, still no application came to be filed.

5. Learned counsel for the petitioner submitted that the petitioner was not represented by a counsel before the Trial Court and on account of medical ailments, for which supporting documents have been filed, the petitioner could not file an application under Section 145(2) of N.I. Act. He further submitted that the petitioner could not file the revision petition before the Sessions Court in time, since he had no knowledge of the passing of the order dated 10.08.2018. He has referred to the petitioner's admission in the hospital on 18.10.2018 and discharge on 17.11.2018.

6. *Per contra*, learned counsel for the respondent/complainant submitted that the petitioner was fully aware of the present case against him, as he had appeared on 20.04.2017 when the notice under Section 251 Cr.P.C. was framed against him. He also referred to the order dated 01.03.2018 to submit that the petitioner was duly represented by his counsel before the Trial Court. It is further submitted that the case is pending at the stage of final arguments before the Trial Court.

7. I have heard learned counsel for the parties and gone through the case records.

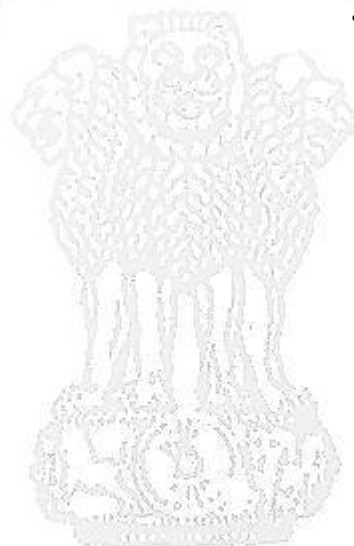
8. As noted hereinabove, the notice under Section 251 Cr.P.C. was framed on 20.04.2017 and the matter was fixed for 21.11.2017. The petitioner appeared and the matter was re-notified for 01.03.2018 on which date, the petitioner appeared along with his counsel but did not file any application under Section 145(2) of the NI Act. The matter was re-notified for 10.08.2018, when the trial court closed the complainant's evidence after expiry of about 11 months the petitioner challenged the order dated 10.08.2018 before the Sessions Court resulting in passing of the impugned order on 20.08.2019. It is seen that although the petitioner did suffer some medical ailments however it was not of such a nature justifying non-filing of application under Section 145(2) of the NI Act by him. It is noted that such an application has not been filed even till date.

9. On 14.12.2019, the petitioner's statement under Section 281 r/w. 313 Cr.P.C. was recorded where also he sought time to lead defence evidence, however, he did not take any steps to lead any defence evidence. On 15.10.2019, the trial court passed an order closing the defence evidence. The petitioner has not challenged the said order.

10. The complaint in the present case was filed before the trial court in the year 2014 and the notice was framed on 20.04.2017. The case is pending at the stage of final arguments. In view of the delay at every stage, I do not find any illegality, perversity or infirmity in the impugned order. Accordingly, the present petition is dismissed along with the pending application.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 22, 2020
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