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

+ **CRL.REV.P. 297/2020**

SHRI AKSHAY KUMAR

..... Petitioner

Through Ms Surinder Kaur, Advocate.

versus

SANJEEV JAIN

..... Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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21.09.2020

[Hearing held through video conferencing]

CRL.M.A. 13022/2020

1. Allowed, subject to all just exceptions.

CRL.REV.P. 297/2020 & CRL. M.A. 13021/2020 (stay)

2. The petitioner has filed the present petition impugning an order dated 20.02.2020 (hereafter the impugned order) passed by the learned ASJ, Rohini Court, Delhi dismissing the petitioner's revision petition.

3. The learned ASJ passed the impugned order in Revision Petition No. 271/2019 preferred by the petitioner against the order dated 02.11.2019 passed by the learned Metropolitan Magistrate. By the said order, the learned MM had rejected the applications filed by the petitioner in two complaint cases bearing numbers 3842/2016 and 3843/2016.

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4. The petitioner had filed an application under Section 45 of the Evidence Act, 1872 for comparison of specimen handwriting of the accused and the complainant with that on the cheques in question. In addition, the petitioner had also filed another application for re-summoning of the concerned bank official from Canara Bank, Narela Branch, New Delhi for re-examination. Both these applications were dismissed by the Learned MM by the said order dated 02.11.2019

5. The respondent had filed complaint cases under Section 138 Negotiable Instrument Act in respect of two cheques which were allegedly issued by the petitioner drawn on Canara Bank, Narela Branch and had been dishonoured on presentation. Accordingly, the complainant had filed two complaints - CC No. 3842/2016 pertaining to dishonour of cheque bearing No. 488482 for a sum of ₹1,11,00,000/- and CC No. 3843/2016 for dishonour of another cheque for a sum of ₹1,20,00,000/-. The said cheques were returned on 08.08.2012 with a memo dated 13.08.2012 with the remarks "funds insufficient".

6. A statutory notice in regard to the dishonour of cheques were served on 24.01.2012 and thereafter, the complainant had filed the complaints. The complainant had examined himself as CW 1. One Clerk from Canara Bank was examined as CW 2. In addition, the complainant had also examined two other witnesses. After the evidence of the complainant was completed, the statement of the petitioner was recorded in both the cases under Section 281 Cr.PC read with Section 313 Cr.PC.

7. The petitioner claims that there were some property dealings between

him and the complainant, however, he did not have any liability towards the complainant. He also states that the cheques in question had been lost in the Month of July, 2012 while he was travelling from Dehradun to Delhi. He had stated that he had also filed a police complaint in this regard.

8. The petitioner also led evidence in his defence and examined three witnesses. Subsequently, at his instance a supplementary statement under Section 313 Cr.PC was also recorded.

9. The order passed by the learned Trial Court indicates that ample opportunities had been granted to the petitioner to lead defence evidence. Notwithstanding the same, he moved another application under Section 311 Cr.PC, which was also dismissed. The petitioner filed a revision petition against the dismissal of the said order but that too was dismissed. The petitioner carried the matter to this Court and by an order dated 07.02.2017 the petitioner was granted limited relief to examine one additional witness. After availing of the said liberty, the petitioner filed the applications in question (one under Section 45 of the Evidence Act for seeking a comparison of the specimen handwritings of the accused and the other for re-examination of one of the witnesses of the complainant)

10. The Trial Court was of the view that the petitioner had been filing applications at a belated stage with a view to delay the proceedings. He further concluded that the record clearly reveals that the petitioner was adopting dilatory tactics and accordingly, the applications filed by the petitioner were dismissed with costs of ₹4000/- by an order dated 02.11.2019.

11. The petitioner filed a revision petition against the said order. The learned ASJ after examining the record, held that sufficient opportunities were granted to the accused to cross-examine the complainant's witnesses and also to state his defence however, the petitioner was now seeking to introduce new defence evidence and pleas that were not raised earlier. The Court also concluded that the petitioner was habitual in engaging in dilatory tactics and stalling the proceedings on one ground or the other. Accordingly, the learned ASJ dismissed the petition with costs quantified at ₹50,000/-.

12. The petitioner has not paid the said costs.

13. A plain reading of the petition indicates that it is bereft of material details. The present petition does not disclose the proceedings conducted by the Trial Court from the time of inception of the complaint. The list of dates filed along with the petition mentions only three dates: the date on which the Trial Court had dismissed the applications; the date of filing of the revision petition; and the date of dismissal of the revision petition.

14. This Court finds no fault with the decision of the learned M.M. or the learned ASJ in dismissing the petitioner's applications as the same were moved at a belated stage. As noticed above, the complaints were filed in the year 2012. There is also no dispute that the petitioner was provided sufficient opportunity to cross examine the witnesses examined on behalf of the complainant as well as lead evidence in defence. The conclusion that the petitioner is deliberately adopting dilatory tactics to delay the proceedings cannot be faulted. The petition is unmerited.

15. In view of the above, the present petition is dismissed with costs

quantified at ₹50,000/-. The costs shall be deposited with the Delhi High Court Legal Services Committee within a period of two weeks from today.

16. The pending application is also dismissed.

VIBHU BAKHRU, J

SEPTEMBER 21, 2020

pkv

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