

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

Date of Decision: 11.02.2020

+ CRL.M.C. 6276/2018 and CRL.M.A. 49341/2018 (stay)

IN THE MATTER OF:

MAUKTIKA ENERGY PVT. LIMITED & ORS. Petitioners
Through: Mr. Manish Verma, Advocate

Versus

ASIA PRAGATI CAPFIN PRIVATE LIMITED Respondent
Through:

**CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

MANOJ KUMAR OHRI, J (ORAL)

1. The present petition is directed against the order dated 24.11.2018 passed by the Metropolitan Magistrate in CC No.5729/2016 whereby the petitioner's application under Section 311 CrPC to recall the AR of the complainant for further cross-examination was dismissed.

2. Learned counsel for the petitioner submits that the present case arises out of proceedings under Section 138 of Negotiable Instrument Act. The Metropolitan Magistrate framed the notice under Section 251 Cr.P.C. and on the same day, the petitioner moved an application under Section 145(2) of NI Act. Subsequently, Mukesh Kumar, AR of the complainant was examined and cross-examined on 17.05.2013. The statement of the accused under Section 313 Cr.PC was recorded on 14.12.2013 and the matter was

posted for defence evidence. The petitioner moved an application under Section 311 Cr.P.C. on 11.03.2015 which was withdrawn on account of some technical defect with liberty to file a fresh application. Consequently, another application under Section 311 Cr.P.C. was filed however, the same was also withdrawn on 20.05.2015 with liberty to file fresh application. The application was withdrawn as the particulars with respect to which the witness was sought to be recalled, were not mentioned in the application. Eventually, a third application under Section 311 Cr.P.C. came to be filed on 06.07.2015, which was dismissed by the impugned order on 24.11.2018.

3. Learned counsel for the petitioner submits that although the AR of the complainant was cross-examined but specific questions about interest and figure of the amount arrived at by the complainant, were not asked. It is submitted that the defence raised by the petitioner was that the cheques in question were given only as security and petitioners No.3 and 4 were neither the directors of the company nor acted as representative of the same. It is submitted that to establish the defence of the petitioner, only one opportunity be granted to complete the cross-examination of the aforesaid witness.

4. I have heard learned counsels for the parties and have also gone through the case records.

5. The trial court has dismissed the petitioner's application citing delay of two years in moving the application and also holding that change of counsel is not a ground to allow an application u/s. 311 Cr.P.C. A perusal of the records reveals that on 20.05.2015, the petitioner's application under Section 311 Cr.P.C. was dismissed as withdrawn. It was observed in the

order that the petitioner had sought filing of a fresh application, which was not opposed by learned counsel for the complainant.

6. A fair trial is the hallmark of criminal procedure. It entails not only the rights of the victim but also the interest of the accused and the society. It is the duty of the criminal court to ensure that fair and proper opportunity is granted to the accused for the just decision of the case. Adducing evidence by the accused in support of his defence is a valuable right.

7. In Natasha Singh v. CBI reported as (2013) 5 SCC 741, while referring to its earlier decisions in Mir Mohd. Omar v. State of W.B. reported as (1989) 4 SCC 436, Mohanlal Shamji Soni v. Union of India reported as AIR 1991 SC 1346, Rajeswar Prasad Misra v. State of W.B. reported as AIR 1965 SC 1887, Rajendra Prasad v. Narcotic Cell reported as (1999) 6 SCC 110, P. Sanjeeva Rao v. State of Andhra Pradesh reported as (2012) 7 SCC 56, T. Nagappa v. Y.R. Muralidhar reported as (2008) 5 SCC 633, the Supreme Court held as under:-

“8. Section 311 Cr.P.C. empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under Cr.P.C., or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, Cr.P.C. has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to

recall him for further examination in order to arrive at a just decision of the case.

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15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 Cr.P.C. must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.

16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered

or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardised. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same.”

8. Learned counsel for the petitioner has also referred to the order passed by a Coordinate Bench of this Court in the connected petition being CRL.M.C. 4234/2016 whereby the petitioner was permitted to lead defence evidence subject to cost of Rs.50,000/-. Learned counsel for the petitioner has submitted that whereas in the connected case, the right to lead defence evidence was closed but in the present case, the trial is still at the stage of defence evidence. He has thus, prayed that an opportunity be granted to cross-examine the complainant's witness on one date only.

9. In view of the above dictum of the Supreme Court as well as the order passed in the connected petition between the parties, the present petition is allowed subject to cost of Rs.1,00,000/- out of which Rs.75,000/- shall be paid to the complainant by way of a Demand Draft and Rs.25,000/- to be deposited with the “*The Delhi High Court (Middle Income Group) Legal Aid Society*” within a period of four weeks from the passing of the order. The petitioner will be entitled to cross-examine the complainant's witness only on one date of hearing unless in the opinion of the court any further date is required to be given. The petitioner will not seek any adjournment on

any of such date on any grounds whatsoever.

10. The petition and the pending application stand disposed of in above terms.

11. Copy of this order be communicated to the concerned trial court.

DASTI.

**MANOJ KUMAR OHRI
(JUDGE)**

FEBRUARY 11, 2020

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