



2024:DHC:296



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 12.01.2024***+ **CRL.M.C. 112/2024 & CRL.M.A. 454/2024**

JEEVESH SABHARWAL & ANR. Petitioners
Through: Mr.Adit S. Pujari, Ms.Mantika
Vohra, Advs.
versus

MAHARAJ KRISHEN PANDITA Respondent
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed challenging the order dated 24.11.2023 (hereinafter referred to as the 'Impugned Order') passed by the learned Metropolitan Magistrate (NI Act) - 03, Patiala House Courts, New Delhi (in short, 'MM') in CT Case No.10250/2019, titled as ***Maharaj Krishen Pandita v. Concept Horizon Infra Pvt. Ltd. & Ors..***

2. By the Impugned Order, the learned MM has been pleased to dismiss the application filed by the petitioners herein under Section 91 of the Code of Criminal Procedure, 1973 (in short, 'CrPC') seeking a direction to the respondent to produce certain documents.

3. The above Complaint Case has been filed by the respondent herein under Sections 138/141/142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act'), contending therein that



the respondent alongwith his wife had invested in the company namely 'M/s Premier Information Technology Parks Pvt. Ltd.' by way of an agreement dated 26.10.2015, by booking an area specified for a banquet, measuring 460 Sq. Ft., at the basic sale price of Rs. 5500/- per Sq. Ft. in the project developed by the said company.

4. It is averred in the Complaint that by way of said agreement, the company, through its Director had issued 24 post dated cheques towards the monthly interest at the rate of 1% per month besides three advance cheques of refund of Rs.16,86,667/-towards the principle, Rs.70,840/-towards service tax and Rs.2,42,880/- towards premium. The said cheques were, however, returned back by the Bank upon presentation being dishonoured for 'insufficient funds'. On presentation again, they were again returned back unpaid for the same reason.

5. During the cross-examination of the respondent, the respondent further stated as under:

"....It is correct that the company was introduced to me by my financial advisors namely 'Karvy'. This product of buy back investment option was introduced to me by Karvy. I do not know their complete details but they are a very famous company. The product details were explained to me by Karvy and some officials from the accused company. It is a matter of record as to whether I have mentioned details of the company Karvy or details of said officials of accused company in my complaint or affidavit. (Vol. The Karvy was not delinquent in my case)".

6. The learned counsel for the petitioners submits that the application was filed by the petitioners seeking production of the



documents in relation to the alleged advice received by the respondent from 'M/s Karvy Realty India Ltd.'. The documents sought by the petitioners in their application before the learned MM are as under:

- "i. All the correspondence between the Complainant and M/s Karvy Realty India Ltd., which are available with the Complainant;*
- ii. All information relating to the contacts of the Accused No. 1 company, CHIPL, and M/s Karvy that were available with the Complainant.*
- iii. All email correspondences between the Complainant and representatives of the Accused No. 1 company/ the Accused No.1 Company itself."*

7. He submits that these documents would be relevant for the proper adjudication of the complaint case filed by the respondent. He submits that, in fact, the petitioners have been wrongly implicated in the case and the main accused, who has perpetrated the fraud, has been granted *interim* protection in a petition filed by him before this Court. He further submits that under Section 91 of the CrPC, these documents would be necessary and desirable for the purpose of trial and therefore, production thereof was rightly sought before the learned MM. In support, he also placed reliance on the judgment of this Court in ***Sanjeev Narula v. Woodcraft Furnishers***, 2023 SCC OnLine Del 4381.

8. I have considered the submissions made by the learned counsel for the petitioners, however, find no merits in the same.

9. As is evident from the reading of the complaint, the complaint is in relation to the dishonour of three cheques given by the company under the agreement executed by the company with the respondent.



On whose advice and why the respondent chose to enter into the said agreement is not relevant for the adjudication of the issue that is before the learned Trial Court. The learned MM has therefore rightly observed as under:

“In the considered opinion of this court, documents sought by the accused are not necessary for the effective cross-examination of complainant and for just decision of the case in the light of the defence taken by the accused no.2 and 4 in notice u/s 251 Cr.PC. Moreover, the court cannot order a fishing and roving inquiry. No specific documents have been mentioned in the application which are required to be produced before the Court. In view of the above discussion, the application u/s 91 Cr.P.C seeking production of certain documents filed on behalf of accused nos.2 & 4 is hereby dismissed.”

10. Section 91 of Cr. P.C. is read as under:

“91. Summons to produce document or other thing.—(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be



deemed—

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

11. The documents, production of which is sought by the petitioners, are neither necessary nor required for the proper adjudication of the complaint case filed by the respondent herein.

12. In *Sanjeev Narula* (supra), the order was passed by the consent of the respondent therein. Therefore, the said judgment would also have no application in the facts of the present case.

13. Accordingly, I find no merit in the present petition. The same is dismissed. Pending application is also disposed of as infructuous.

14. The petitioners shall deposit costs of Rs.25,000/- each with the Delhi State Legal Services Authority within a period of two weeks from today. The amount so deposited shall be utilised by the Delhi State Legal Services Authority for providing counselling/ psychological support to the POCSO Victims requiring such assistance.

15. It is made clear that any observation made hereinabove, shall not prejudice the petitioners in the trial of the complaint case.

NAVIN CHAWLA, J

JANUARY 12, 2024/Arya/ss

Click here to check corrigendum, if any