



2024:DHC:410



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

Date of decision: 18.01.2024

+ **CRL.M.C. 349/2022 & CRL.M.A. 1521/2022**

RAKESH ROY AND ANR

..... Petitioners

Through: Ms.Rashi Jain, Mr.Vishal Chauhan, Mr.Mihir Garg, Ms.Shivya Sharma, Mr.Nikhil Kadha and Mr.Ramesh Pandey, Advs.

versus

OXFORD UNIVERSITY PRESS INDIA

..... Respondent

Through: Mr.Anupam Lal Das, Sr. Adv. with Mr.Samir Tandon, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This matter has been taken up today as 17.01.2024, that is, the date earlier fixed in the matter, was a holiday.
2. This petition has been filed by the petitioners under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the Order dated 02.12.2021 (hereinafter referred to as the 'Impugned Order') passed by the learned Metropolitan Magistrate-04, NI Act, Patiala House Courts, New Delhi (hereinafter referred to as 'Trial Court'), dismissing the application filed by the petitioners herein under Section 145(2) of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act'), observing that the petitioner no.1 has failed to disclose any particular or specific defence in his



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favour so as to allow the petitioner no. 1 to cross-examine the Complainant, especially when the petitioner no. 1 has admitted his signature on the cheque in question. The learned Trial Court further held that mere averment that the cheque was issued for the purpose of security, without any specific averment or fact is not sufficient so as to allow the petitioner to cross-examine the respondent/Complainant.

3. The learned counsel for the petitioners submits that in the Order dated 29.02.2020 passed by the learned Trial Court while framing the notice against the petitioner no. 1, the petitioner no. 1 has taken a categorical defence that the cheques in question were issued as security and, were given blank. She submits that for proving the said defence, the cross-examination of the respondent is essential.

4. On the other hand, the learned senior counsel for the respondent submits that in the application filed under Section 145(2) of the NI Act, the petitioner no. 1 has not disclosed any reason for cross-examining the respondent. He submits that, therefore, the Impugned Order has rightly been passed by the learned Trial Court.

5. I have considered the submissions made by the learned counsels for the parties.

6. In the application under Section 145(2) of the NI Act filed by the petitioner no.1, no reason has been given by the petitioner no. 1 for cross-examining the respondent, and only a vague averment has been made as under:

“That the Accused has no liability to pay the cheque amount as alleged by the Complainant and the case filed by the complainant is not maintainable. Said fact can be proved, in case the accused is given an



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opportunity to cross examine the Complainant. Therefore, in the interest of justice and just and fair adjudication of the above titled matter the applicant may kindly be allowed to call the Complainant to cross-examine him.”

7. The above averment is rather vague and as observed by the learned Trial Court, gives no indication as to why the petitioner no. 1 wishes to cross-examine the respondent. However, at the same time, the defence of the petitioner no. 1 is evident from the Order dated 29.02.2020, which *inter alia* records as under:

“Q. What do you have to say with respect to this case against you. Do you have any defence to make, if yes, what is it?

A. The cheques in question were issued undated as security cheques to the complainant. The cheques in question were given blank cheques. The particulars on the cheque in question are not filled by me, they must have been filled in by drawee subsequently. I have no liability qua cheque in question as alleged by the complainant. I have received legal notice.”

8. In view of the above defence of the petitioner no. 1, in my view, for a fair and proper adjudication of the complaint case filed by the respondent, an opportunity has to be granted to the petitioners to cross-examine the respondent.

9. Accordingly, the Impugned Order dated 02.12.2021 cannot be sustained and is set aside.

10. At the same time, the petitioners, in their application under Section 145(2) of the NI Act, should also have disclosed proper reasons for seeking an opportunity to cross-examine the Complainant. In the present case, the same has not been done. Therefore, while allowing the present petition and granting an opportunity to the



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petitioners to cross-examine the respondent, the petitioners are subjected to the following conditions:

- (a) The petitioners shall pay costs of Rs.10,000/- to the respondent within a period of two weeks from today; and
 - (b) As and when the learned Trial Court fixes a date for the appearance of the respondent for purposes of cross-examination, the petitioners shall cross-examine the respondent without seeking any adjournment.
- 11. The learned Trial Court is also requested to expedite the trial.
 - 12. With the above directions, the present petition is allowed.
 - 13. The pending application is disposed of as infructuous.

NAVIN CHAWLA, J

JANUARY 18, 2024/ns/ss

Click here to check corrigendum, if any