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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 1138/2023, CRL.M.A. 4373/2023 and

CRL.M.A. 6003/2023

KRS LINGUISTIC CARGO COURIER SERVICE PVT LTD

CORRECT NAME IS KRS CARGO AND COURIER SERVICES

PVT LTD & ANR.

.....Petitioners

Through: Mr.Ganesh Kumar, Advocate

versus

STATE GOVT. OF NCT OF DELHI & ANR.Respondents

Through: Mr.Laksh Khanna, APP for State

Mr.Sundaram Ojha, Mr.Nikhil Pandey, Ms.Neha,

Mr.Abhishek, Mr.Lalit and Ms.Pallavi, Advocates

for respondent No.2

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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23.09.2024

1. By way of present petition, the petitioners, who are arrayed as accused in the proceedings initiated under Section 138 NI Act, are aggrieved by the order dated 24.01.2023 passed by learned ASJ-03, Central District, Tis Hazari Courts, Delhi in Crl. Revision No. 39/2023 vide which the application filed by complainant/respondent No.2 under Section 311 Cr.P.C. seeking recall of complainant was allowed, subject to the payment of cost of Rs.35,000/-.

2. Learned counsel for the petitioners submits that the learned Trial Court, after noting the facts and the delay caused in the trial on account of the complainant itself, has rightly dismissed the said application. He further submits that the impugned order came to be passed in a revision petition and



that since the order assailed therein was interlocutory in nature, the revision petition was maintainable.

3. In the present case, the proceedings came to be initiated by respondent No.2 under Section 138 NI Act. A perusal of the paper book would reveal that multiple opportunities were granted to the complainant to lead evidence, however, on its failure, the complainant's evidence was closed on 26.03.2022 and thereafter, the matter was listed for the statement of the accused and the defence evidence. Subsequently, the complainant had preferred an application under Section 311 Cr.P.C. seeking recalling of witness (CW-1) / Authorized Representative of the petitioner. Though the Trial Court had dismissed the said application, the Revisional Court had allowed the same subject to the payment of Rs.35,000/- as cost. The said cost has already been deposited. There is no dispute regarding the same.

4. The orders passed under Section 311 Cr.P.C. are indeed interlocutory in nature. The issue is no longer *res integra* in terms of the decision of the Supreme Court in Sethuraman v. Rajamanickam reported as **(2009) 5 SCC 153**. The relevant extracts are as under: -

5. Secondly, what was not realized was that the orders passed by the trial court refusing to call the documents and rejecting the application under Section 311 CrPC, were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C. The trial court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent-accused and the only defence that was raised, was that his signed cheques were lost and that the appellant complainant had falsely used one such cheque. The trial court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders i.e. one on the application under Section 91 CrPC for production of



documents and other on the application under Section 311 Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed.

5. Considering the fact that respondent No.2 had already paid the aforesaid cost, this Court deems it fit to exercise powers under Section 482 Cr.P.C. to allow respondent No.2 to recall the CW-1/AR and examine the witness.
6. Learned counsel for respondent No.2 submits that the examination would be carried out on one date. The petitioner shall also be at liberty to cross examine the said witness preferably on the same day.
7. Learned counsels for the parties submit that they would not seek adjournments unless exceptional grounds are made out.
8. With the aforesaid observations, the petition is disposed of alongwith the pending applications.

MANOJ KUMAR OHRI, J

SEPTEMBER 23, 2024

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