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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1267/2023**

SH. GURJEET SINGH

.....Petitioner

Through: Mr. Anwesh Madhukar, Mr. Ajay
Khanna and Ms. Prachi Nirwan,
Advocates.

versus

BALWINDER SINGH SETHI

.....Respondent

Through: Mr. Sudhir K. Saneja, Advocate
alongwith respondent through V.C.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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12.09.2024

1. By way of present petition, the petitioner seeks to assail the order dated 13.02.2023 passed by Ld. Judicial Magistrate, Tis Hazari Courts, Delhi, in CC No. 15993/2016 vide which the petitioner's application filed under Section 311 Cr.P.C. came to be dismissed.
2. Learned counsel for the petitioner submits that the dismissal of the subject application would adversely affect the petitioner who is facing trial in proceedings initiated by the respondent under Section 138 of the NI Act. It is also stated that the petitioner's earlier application filed under Section 311 Cr.P.C. came to be allowed, however, the said decision was overturned by the Ld. Sessions Court. In this regard, he has referred to the decision in M/s Magnum Resources Pvt. Ltd. v. M/s India Sewing Machine Company & Anr. passed by this Court on 14.03.2024 in CRL.M.C. 8172/2023.
3. The petition is opposed by learned counsel for the respondent, who



contends that the present complaint pertains to the year 2012.

4. I have heard the learned counsels for the parties and perused the impugned orders.

5. Apparently, the proceedings were initiated with respect to a loan extended on 01.03.2012 wherein the subject cheque dated 15.03.2012 was statedly issued by the present petitioner. On 16.05.2012, the said cheque, on presentation, got dishonoured with the remarks, '*insufficient funds*'. Since the amount under the subject cheque remained unpaid despite issuance of a legal notice, the underlying complaint under Section 138 of NI Act came to be filed on 04.07.2012. A further perusal of the proceedings would reflect that notice under Section 145(2) NI Act was framed on 01.10.2014 and the right to the cross-examine the complainant was closed on 05.11.2015. In the meantime, proceedings under Section 82 Cr.P.C. were also initiated against the petitioner, wherein he was declared a Proclaimed Offender. In between, the petitioner filed an application under Section 311 Cr.P.C. and the same was allowed, however, on a challenge made by the respondent, the learned Sessions Court set aside the said order. This order attained finality and was never assailed by the petitioner. Eventually, the petitioner was convicted, however in appeal, the conviction was set aside on technical ground as the statement of the petitioner was not recorded. The matter was remanded back to the Trial Court. The trial proceeded thereafter, during which, on the petitioner filing the subject application reiterating his prayer under Section 311 CrPC, the impugned order came to be passed.

6. This Court is constrained to note that instead of assailing the order dated 02.08.2016 vide which the Sessions Court set aside the order passed by the learned Judicial Magistrate allowing the petitioner's application under



Section 311 Cr.P.C., the petitioner has preferred the subject application on 17.09.2022, after nearly seven years, which came to be dismissed by the impugned order. Indeed, fair trial is the hallmark of any criminal proceedings, however, the conduct of the petitioner in the present case states otherwise. The delay in trial is attributable to the petitioner who had remained absconding. This Court is not inclined to entertain the challenge and accordingly, the same is dismissed.

7. Keeping in view that considerable delay has occurred in the trial of the present case, the Trial Court shall make an endeavour to expedite the trial and conclude the same preferably within three months from today.

8. Copy of the order be communicated to the concerned Trial Court.

MANOJ KUMAR OHRI, J

SEPTEMBER 12, 2024

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