



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

Reserved on : 10.01.2024

Pronounced on : 30.01.2024

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CRL.M.C. 1397/2023

MRS. KANTA GOEL

..... Petitioner

Through: Mr. Bhavesh Kumar Sharma,
Advocate.

versus

MR. ATUL GUPTA

..... Respondent

Through: Mr. Ankit Gupta, Advocate
Respondent in person.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present petition under Section 482 Cr.P.C. has been filed by the petitioner with the following prayers:

"I. Quash/set-aside the impugned orders dated Orders Dated 08/12/2022 passed by the Court of Shri Yashwant Kumar Ld. Principal District & Session Judge, North-West, Rohini Courts, Delhi in Crl. Revision No. 227/2022 titled "Mrs. Kanta Goel Versus Mr. Atul Gupta" and order dated 20.07.2022 passed by the Ld. Trial Court Ms. Mansi Malik MM North West Rohini in CC No. 5377/2016 Ps South Rohini Titled "Mrs. Kanta Goel Versus Mr. Atul Gupta"

II. Pass any other order or direction that this Hon'ble Court may deem fit and proper in the nature and circumstances of the case"

2. Briefly stated, the facts of the case are that on 04.07.2013, the complainant/petitioner had filed a complaint against the accused/respondent under Section 138 and 142 of the Negotiable Instruments Act, 1881 before



the Ld. CMM, North-West, Rohini Court for returning of cheque bearing No. 023016 dated 25.03.2013 for a sum of Rs. 15,10,000/- for the reason 'Funds Insufficient' vide return memo dated 26.04.2013.

3. Vide impugned Order dated 20.07.2022, respondent/accused moved an application under Section 311 Cr.P.C for recalling of CW-1 (petitioner herein) as CW -1 was not sufficiently cross examined with respect to her source of income and financial capacity to extend the loan in question and the Ld. Trial Court allowed the said application while observing that though an application under Section 311 Cr.P.C cannot be filed for filling the lacunas in the case of any of the parties, however, in the present case the cross examination of the complainant is essential for fair adjudication of the present case. Thereafter, the petitioner filed Crl. Revision No. 227/2022 before Ld. District & Session Judge North-West, Rohini Court, Delhi against the order dated 20.07.2022 and vide impugned Order dated 08.12.2022, the same was dismissed by Ld. Principal District & Session Judge, North-West, Rohini Courts with the observation that recalling of complainant for her recross-examination is essential for the just and proper adjudication this case.

4. The petitioner/ complainant has assailed the order dated 20.07.2022 passed by Ld. MM-03, Rohini Court in CC No. 5377/2016 and order dated 08.12.2022 passed by Ld. Principal District & Session Judge, Rohini Courts in Crl. Revision No. 227/2022.

5. I have heard the Ld. Counsel for the petitioner as well as the Ld. Counsel for the respondent and perused the records of this case.

6. Learned counsel for the petitioner has vehemently urged that there



is a delay of more than two years and ten months in filing of the application under Section 311 Cr.P.C for recalling of the complainant. He further submitted that recalling of the complainant under Section 311 Cr.P.C at the stage of defence evidence is not maintainable and clearly depicts the intention of the respondent to fill up the lacunas of the cross-examination of witness and the Ld. Revisional Court as well as Ld. Trial Court has failed to appreciate that the application under Section 311 Cr.P.C has been allowed without any specific questions or aspects being pointed out by the respondent/accused and the respondent/accused is being given the blank opportunity for unlimited cross-examination of the petitioner. He further submitted that the recording of evidence in the present case is at its fag end and the plea to recall for cross-examination at this stage is unwarranted as the respondent had already availed his right to cross-examine the witness. He further submitted that the case is pending trial since 2013 and a long period of more than nine and half years has elapsed in the trial and now the case is at its final stage i.e., pending for defence evidence.

7. He further submitted that the complainant/petitioner has already been cross-examined thrice in great detail on every aspect including her sources of income, ITRs, financial capacity, subsequent period ITRs, bank details, pass-book etc. on 05.08.2017, 15.07.2019 and 06.09.2019 respectively and thus, the ground taken by the respondent for recalling of CW-1 that “*when the present counsel was preparing for defence evidence he realized that the petitioner/complainant was not sufficiently cross-examined, on earlier occasion by previous counsel*” is totally unwarranted and accordingly, the impugned orders deserve to be set aside.



8. On the other hand, Ld. Counsel for the respondent submitted that the respondent has been falsely implicated in this case and the complainant has filed a false and frivolous case of dishonour of cheque no. 023016 dated 25.03.2013 against the respondent. He submitted that the true facts of the case are that the brother-in-law of the petitioner was an employee of M/s Varun Sales, who used to visit the office of the respondent frequently for selling of goods and for collection of payments on behalf of the firm where was working as a sales manager and as per the respondent, the brother -in-law of the petitioner has stolen the cheque in question from the office of the respondent because he knew that the respondent used to keep signed blank and undated cheques. He further submitted that the respondent on 03.10.2008 had already registered a complaint regarding the theft or misplacement of the cheque book containing the cheque in question at P.S Keshav Puram. He further submitted that the respondent has no relation with the petitioner and he had never met her before filing of the case. He further submitted that the firm of respondent, namely, M/s Atul Industries was closed down way back in 2009 and instructions were also issued to the bank that any cheque issued by the firm must have two signatures before clearing and therefore, the cheque in question should not be dishonoured due to funds insufficient rather on the ground of bearing only one signature instead of two signatures and thus, the petitioner has committed fraud in connivance with the officials of the bank to get a favourable report of dishonour of cheque with false remark. He further submitted that when the counsel who is presently engaged by the respondent was preparing for defence evidence he realized that the petitioner was not sufficiently cross-examined, on earlier occasion by the previous counsel with respect to her source of income and



financial capacity to extend the loan of Rs. 15,10,000/- to the respondent. He further submitted that the petitioner has also filed a civil suit for recovery of money titled bearing no. CS DJ 78115/16 which is pending before Ld. ADJ, Rohini Courts with respect to the cheque in question and in the said civil suit, the petitioner in her cross-examination dated 06.07.2022 has admitted that immediately after withdrawing the money from her bank account she had in fact purchased the property and has stated to have spent Rs. 23,50,000/- of which approximately 17,50,000/- was paid by cheque and remaining amount was paid in cash and the amount of withdrawal and the property purchased is not reflecting in the ITRs placed by the petitioner on record, therefore, ITRs and cross examination of the petitioner with respect to the period prior to and subsequent to the period of alleged transaction and also, prior to and subsequent to filing of the recovery suit, is essential and substantial so as to corroborate her averments as to her financial capacity and germane to the issues involved in the present case.

9. The main ground sought by the respondent for recalling of CW-1, namely, Kanta Goel is that CW-1 has not been cross examined with respect to her source of income and financial capacity to extend the loan in question, however, perusal of the records of this case shows that complainant has already been cross-examined in great detail regarding her source of income as well as her financial capacity and furthermore, the complainant was cross-examined on three different occasions i.e., on 05.08.2017, 15.07.2019 and 06.09.2019 and the same stood concluded.

10. From an overview of the material on record, it is borne out that sufficient opportunity to cross-examine CW-1 was available to the



respondent and the same has also been availed by him thrice on 05.08.2017, 15.07.2019 and 06.09.2019. The cross-examination of CW-1 stood concluded way back in 2019 but it is only on 20.07.2022 that the respondent moved the application under Section 311 Cr.P.C. for recalling of CW-1 which was after a delay of more than two years and ten months of the cross-examinations.

11. As far as the contention of the counsel for the respondent that the petitioner/complainant (CW-1) was not sufficiently and properly cross-examined, on earlier occasions by the previous counsel does not cut much ice as the Hon'ble Supreme Court has time and again cautioned that witnesses cannot be allowed to be recalled in a routine manner merely on the ground that the cross-examination was not properly conducted. Reliance can be placed upon ***State (NCT of Delhi) vs. Shiv Kumar Yadav & Anr. [(2016) 2 SCC 402]*** wherein it was observed as under:

"...witnesses cannot be expected to face the hardship of appearing in court repeatedly, particularly in sensitive cases such as the present one. It can result in undue hardship for victims, especially so, of heinous crimes, if they are required to repeatedly appear in court to face cross-examination.

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27. ...Undoubtedly, fair trial is the objective and it is the duty of the court to ensure such fairness. ...Mere observation that recall was necessary "for ensuring fair trial" is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona



fide and has to be balanced carefully with the other relevant considerations including uncalled for hardship to the witnesses and uncalled for delay in the trial. Having regard to these considerations, we do not find any ground to justify the recall of witnesses already examined.”

12. In the present case, though it has been averred that proper cross-examination of the witness has not taken place, however, there is nothing on record to indicate that the said witness was not been cross-examined or due opportunities have not been afforded to the counsel for respondent as bare perusal of the records of the instant case reveals that the CW-1 has been cross-examined on not one but on three different occasions and thereafter, the cross- examination was also concluded. Moreover, after nearly three years of CW-1 having been cross-examined by the counsel for the respondent, the respondent is taking frivolous contentions for recalling of CW-1 only because of change of counsel and this certainly is not permissible.

13. Furthermore, as far as the contention of counsel for the respondent that the defence evidence is still to be led and therefore, he may be granted permission to place on record the cross-examination of the complainant in the complaint case, in my considered opinion, no such permission or liberty is required to be granted as the respondent can certainly take appropriate steps as per law to place on record the cross examination of the petitioner done in the Civil Court in the Civil Suit.

14. Keeping in view the aforesaid precedent and the entire facts and circumstances of this case, this petition is allowed and the impugned order dated 20.07.2022 passed by Ld. MM-03, Rohini Court in CC No. 5377/2016 and order dated 08.12.2022 passed by Ld. Principal District & Session



2024:DHC:617



Judge, Rohini Courts in Crl. Revision No. 227/2022, are set aside.

15. Accordingly, the present petition stands disposed of along with pending applications, if any.

RAJNISH BHATNAGAR, J

JANUARY 30, 2024/ib