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

+ CRL.M.C. 684/2020, CRL.M.A. 2830/2020

KAMAL KULTHIYA

.....Petitioner

Through: Mr. Kushal Raj Gupta, Ms. Shikha Gupta and Ms. Muskan Mahajan, Advocates.

versus

MEHUL JAIN

.....Respondent

Through: Mr. Deepak Kumar, Mr. Puneet Singh, Mr. Ishan Ahuja and Mr. Praveen Kumar, Advocates.

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+ CRL.M.C. 695/2020, CRL.M.A. 2869/2020

SH. KAMAL KULTHIYA

.....Petitioner

Through: Mr. Kushal Raj Gupta, Ms. Shikha Gupta and Ms. Muskan Mahajan, Advocates.

versus

SH. MEHUL JAIN

.....Respondent

Through: Mr. Deepak Kumar, Mr. Puneet Singh, Mr. Ishan Ahuja and Mr. Praveen Kumar, Advocates.
SI Trilok, P.S. Karol Bagh.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

17.09.2024

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1. Petitions under Section 482 of Cr.P.C have been filed for setting aside



the Order dated 28.01.2020, passed by learned ASJ in Criminal Revision No.412/2019 vide which the Application under Section 145(2) N.I Act read with Section 311 Cr.P.C filed by the petitioner/accused, has been dismissed.

2. It is submitted that the Notice under Section 251 Cr.P.C was framed on 23.10.2017. The petitioner/accused as well as the counsel failed to appear on 21.05.2018. Consequently, the right to file the Application under Section 145(2) N.I. Act was closed and NBWs were issued. Eventually on 27.05.2019 the Application under Section 145(2) N.I. Act read with Section 311 Cr.P.C was filed on behalf of the accused for grant of opportunity to cross-examine the Complainant, which was dismissed by learned M.M, vide Order dated 27.05.2019.

3. The Revision was filed before the learned ASJ, who in the impugned Order dated 28.01.2020 observed that by way of the present Revision, the petitioner in fact is seeking to challenge the Order dated 21.05.2018 vide which the right to file the Application under Section 145(2) N.I Act was closed and consequently dismissed the Revision.

4. **Submissions heard.**

5. It is a case where the petitioner/accused has been totally negligent and has been indulging in various dilatory tactics only to buy time. Pertinently, when the question was put to learned Counsel about the defence disclosed in his Notice under Section 251 Cr.P.C, he was completely unaware. There is also no mention of the defence taken under Section 251 Cr.P.C in the present petition.

6. Be as it may, the learned Counsel for the petitioner has argued that in fact the cheque was given as a security for another transaction against which the goods had already been delivered and there is no underlying obligation



in respect of the impugned cheque. It is also asserted that there is an MOU dated 16.07.2015 entered into between the parties, wherein it was stipulated that Cheque would not be presented in case 50% of the cheque amount was realized by the Complainant.

7. It is now claimed on a specific query, that because more than 50% of the cheque amount has been paid and there is no substantive liability or the obligation for the complainant to have presented the cheque for encashment. The said presentation was contrary to the terms of the MOU. On further query it has been stated that the defence of the accused is limited to the breach of MOU which was admittedly entered into between the parties.

8. Learned counsel for the Complainant has opposed the present Application under Section 145(2) NI Act, but considering that this is a Complaint pending since 2017 and the trial is held up, one opportunity must be given to the accused to establish his defence considering the impunitive nature of the trial.

9. The Application is allowed and one opportunity is granted to the accused for cross-examination of the complainant, on the lines of defence disclosed in his Application under Section 145(2) NI Act. The petitioner/accused shall not be given any further opportunity. The petitions are allowed subject to payment of Rs.25,000/- each Complaint, to be paid to the respondent.

10. Both the petitions are accordingly disposed of along with pending Applications.

NEENA BANSAL KRISHNA, J

SEPTEMBER 17, 2024/va