



2024:DHC:2793



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 03.04.2024***

+ CRL.M.C. 2084/2024 & CRL.M.A. 8056/2024, CRL.M.A. 8057/2024

M/S JAI DURGA INDUSTRIES

..... Petitioner

Through: Mr.Amar Nath Saini,
Mrs.Preeti Saini, Mr.Karan
Gupta, Mr.Rohit Singh, Mohd.
Sufiyan, Mr.Mukesh Tiwari,
Mrs.Sarita Singh, Mrs.Tanuja
Kaushik, Advs.

versus

PHOOL CHAND BHAGAT SINGH

..... Respondent

Through: Mr.Manoj Kumar Verma and
Mr.Amit Kumar Khandelwal,
Advs.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the order dated 18.11.2023 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional Sessions Judge-02, (Central-District), Tis Hazari Courts, Delhi (hereinafter referred to as the 'Revision Court') in Criminal Revision No. 542/2023 titled as *Jai Durga Industries Through its Proprietor Vikas Aggarwal v. Phool Chand Bhagat Singh*,



dismissing the said Revision Petition.

2. The said Revision Petition had been filed by the petitioner herein challenging the order dated 20.07.2023, passed by the learned Metropolitan Magistrate (NI Act)-02, Central District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Trial Court'), closing the right of the petitioner to cross-examine the respondent in the complaint filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act').

3. The learned counsel for the petitioner submits that the petitioner merely requires just one opportunity to cross-examine the respondent and is willing to subject himself to any condition that this Court may impose for the same. He submits that cross-examining the respondent is very vital and the absence thereof would severely prejudice the petitioner in its defence.

4. In support of the above submissions, the learned counsel for the petitioner places reliance on the judgments of this Court in *Manoj Sharma v. Rahul Jain*, 2015 SCC OnLine Del 11349; *Ganesh Bahal v. Karambir Aggarwal*, 2022:DHC:3484; and of the Rajasthan High Court in *Mohan Bhai Bhalla Bhai Boi v. State of Rajasthan & Anr.*, decided on 30.01.2018 in S.B. Criminal Misc. (Pet.) No. 4087/2017; and of the Punjab and Haryana High Court in *Sanjiv Nagpai v. Atul Sharma*, 2013 SCC OnLine P&H 7914.

5. I have considered the submissions made, however, find no merit in the same.



2024:DHC:2793



6. From the Impugned Order itself, it is reflected that the petitioner had been served with the summons of the complaint filed by the respondent, way back on 05.02.2020. In spite of service of the same on the petitioner, the petitioner did not appear before the learned Trial Court, and appeared only on 06.05.2022 when the bailable warrants were issued against it. Thereafter, the trial was listed on 27.08.2022, 28.11.2022, 23.02.2023, and finally, on 20.07.2023 for cross-examination of the respondent. On each of these dates, the petitioner sought adjournment and the cross-examination was not conducted. Faced with the above conduct, the learned Trial Court was left with no other option but to close the right of the petitioner to cross-examine the respondent.

7. In **Manoj Sharma** (Supra), the accused had contended that he was unable to cross-examine the complainant therein as his father had died due to which he was not available on two dates of hearing while on the third date the counsel was held up in another Court.

8. In **Ganesh Bahal** (Supra), the witness had been partially cross-examined, and in view of the said fact, the court therein allowed the prayer.

9. In **Mohan Bhai Bhalla Bhai Boi** (Supra), the Court in the facts of the said case exercised its inherent powers in order to do real and substantial justice and held that it would be just to impose costs so as to compensate the complainant therein.

10. In **Sanjiv Nagpal** (Supra), the Court held that no



prejudice will be caused to the complainant if an opportunity is granted to the accused to cross-examine the complainant's witness subjecting the accused to costs.

11. The above referred judgements by the petitioner were, therefore, on their own facts and cannot come to the aid of the petitioner, who has been in defiant attitude not cross-examining the respondent though repeated opportunities for the same were granted to it by the learned Trial Court. The Court is not to consider only the prejudice caused to the accused, but also to the Complainant who has approached a Court of law expecting expeditious relief on his complaint. Only to safeguard the interest of the accused, the rights of the Complainant cannot be made subordinate or ineffective.

12. Allowing the petitioner a further opportunity to cross-examine the respondent at this stage would negate the very object of the introduction of Section 138 of the NI Act, which is to enforce financial discipline in the growing business trade, commerce and industrial activities in the country. Section 138 of the NI Act is supposed to be summary proceeding. Granting repeated opportunities to the accused to cross-examine the respondent would negate the mandate of the provision.

13. In the present case, I have even considered if the petitioner can be visited with some costs and allowed another opportunity to cross-examine the respondent. However, I have reached a conclusion that following this process would be to defeat the interest of justice. It is noted that the learned counsel



2024 : DHC : 2793



for the petitioner has given absolutely no justification for the petitioner not cross-examining the respondent for a period of almost one year, though repeated opportunities were granted by the learned Trial Court for the same. Earlier also, in spite of service of notice, the petitioner had not appeared before the learned Trial Court until issuance of bailable warrants. The aim of the petitioner is, therefore, only to delay the disposal/ adjudication of the Complaint filed by the respondent and merely visiting him with costs would be to allow the petitioner to succeed in its *malafide* intent. Subjecting the petitioner to costs and granting further opportunity to the petitioner to cross-examine the respondent, in the facts of the present case, would, in fact, be giving an undue benefit to the petitioner at the cost of the respondent.

14. Even otherwise, the learned Trial Court and the learned Revisional Court have given cogent reasons for denying such prayer of the petitioner. The Supreme Court in ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri***, (1999) 2 SCC 452, has reiterated that the power of the court is to correct any miscarriage of justice, jurisdictional error or for other like reasons; it cannot be equated with an appellate jurisdiction. In the present case, there is no error of jurisdiction committed by either the learned Trial Court or by the learned Revisional Court.

15. In spite of the above, as the cheque in question is for an amount of Rs.70 lakhs, I had proposed to the learned counsel



2024:DHC:2793



for the petitioner if the petitioner was willing to deposit Rs.16 lakhs (approximately 12% of the amount of the cheque for a period of two years delay) with the learned Trial Court as a condition for granting another opportunity to the petitioner to cross-examine the respondent. The learned counsel for the petitioner, after taking instructions from the petitioner, refused the offer.

16. Accordingly, I find no merit in the present petition. The same is dismissed. The pending applications also stand disposed of.

NAVIN CHAWLA, J

APRIL 3, 2024/rv/ss

Click here to check corrigendum, if any