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

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Reserved on: 03.04.2024
Pronounced on: 25.04.2024

+ **CRL.M.C. 1109/2020**

NAGEENA ARORA

..... Petitioner

Through: Counsel (appearance not
given)

versus

STATE & ANR.

..... Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.
Mr. Raj Kumar and Mr.
Sacheet Sharma, Advocates
for R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 ('*Cr.P.C.*') has been filed on behalf of petitioner seeking quashing of impugned order dated 28.11.2019 passed by learned Additional Chief Metropolitan Magistrate, Rohini (North) Court, Delhi ('*learned Trial Court*') in Complaint Case no. 35/2017 filed under Section 138 of Negotiable Instruments Act, 1881 ('*NI Act*').



2. Brief facts of the case, as per complaint filed under Section 138 of NI Act are that in October, 2016, the accused i.e. petitioner had approached the complainant i.e. respondent no. 2 and had requested him to advance a friendly loan of Rs.10 lakhs to him on the assurance that he would return the same within a period of 15 days. Considering the cordial relations between them, the complainant had agreed to the terms of the accused and had given an amount of Rs.10 lakhs to him in second week of October, 2016. On 01.11.2016, the complainant had requested the accused to return the aforesaid amount and on 02.11.2016, the accused had sent a cheque bearing no. 621306, dated 03.11.2016, drawn on State Bank of India, Vijay Nagar Branch, Delhi for a sum of Rs.10 lakhs, in discharge of his dues. The accused had assured the complainant that the cheque would be honoured upon its presentation. However, when the cheque in question was deposited for encashment by the complainant, the same had got dishonoured *vide* return memo dated 04.11.2016 with the remarks 'Insufficient Funds'. Though the complainant thereafter had tried to contact the accused about the same, the accused however had not responded to the complainant's demand. Statutory legal notice dated 23.11.2016 was sent by the complainant to the accused calling upon him to pay the dishonoured cheque amount within 15 days. Despite the receipt of the notice, the accused neither gave any reply nor made the payment of dishonoured cheque amount. Pursuant thereto, the complaint under Section 138 of NI Act was filed by the complainant.



3. The case set out by the petitioner is that summons were issued to him and pursuant thereto, he had appeared before the learned Trial Court and notice under Section 251 of Cr.P.C. was framed against him. Thereafter, the petitioner had moved an application under Section 145(2) of NI Act stating that the petitioner did not know respondent no. 2 and he had not approached him for obtaining any loan and the cheque in question had been misused by one Mr. Satish Aggarwal through respondent no. 2. It was further stated that these persons were involved in the business of betting/gambling and they had entered into transactions with the son of the petitioner namely Mr. Punit Arora and made illegal demands from him. It was also stated that the son of petitioner had been beaten up by these persons on the pretext that he owed an amount of Rs.1 crore to them and the petitioner's son had handed over some cheques to the petitioner to these persons. Thereafter, respondent no. 2 was examined and cross-examined on 20.04.2019 and 26.07.2019 respectively. In the cross-examination, respondent no. 2 was examined in respect of his transactions with the petitioner's son and was questioned about receipt of Rs.37 lakhs issued in favour of the petitioner by the son of respondent no.2. Thereafter, the statement of petitioner was recorded under Section 313 Cr.P.C. on 29.08.2019 and petitioner and her husband were examined on 10.10.2019 whereby both of them stated that petitioner had paid a sum of Rs.37 lakhs to the son of respondent no. 2 and remaining balance of Rs 9 lakhs was paid by the petitioner and her husband. The defence evidence was closed thereafter.



4. Learned counsel for petitioner now argues that the petitioner had filed an application under Section 311 of Cr.P.C. to place on record additional material documents *inter alia*, the receipts of Rs. 37 lakhs and Rs. 9 lakhs, and to examine the son of the petitioner. It is stated that the learned Trial Court has however, *vide* the impugned order dated 28.11.2019, dismissed the application of petitioner, on a wholly incorrect premise that the petitioner had failed to point out how the documents were material and that since, the petitioner failed to admit the receipt, the learned Trial Court opined that the filing of the application is only a tactic to delay the final hearing of the complaint case. It is argued that the learned Trial Court has failed to appreciate that the possession and knowledge of the receipts have already been clearly stated by the petitioner in the examination conducted on 10.10.2019 as well as the fact that in respect of the balance receipt of Rs. 9 lakhs, the husband of the petitioner has categorically stated that the said balance payment of Rs. 9 lakhs has already been made to the son of respondent no. 2. In these circumstances, there was no occasion for the petitioner to have admitted the receipt showing balance of Rs. 9 lakhs and therefore, the dismissal of the application on the aforesaid ground is wholly incorrect. It is stated that the learned Trial Court has failed to appreciate that by way of application under Section 311 of Cr.P.C., the petitioner has sought to place on record material evidence and documents, in order to prove and establish the defence. It is stated that the said documents are material as they go to the root of the matter, in the sense, that the same are pertinent for establishing the



fact that petitioner had in fact made payment to the son of respondent no. 2 and that the case set-up by respondent no. 2 is false, fabricated and concocted. It is further stated that the learned Trial Court failed to appreciate and consider that by way of an application under Section 311 of the Cr.P.C., the petitioner had also sought to examine her son i.e. Mr. Puneet Arora, which was rejected without any reason, whatsoever. It is submitted that the petitioner had already stated that the business transaction, if any, were between the son of the petitioner and the son of respondent no. 2 and that the petitioner had never entered into any transaction with respondent no. 2. The examination of the son of the petitioner was important to establish the defence of the Petitioner, which the learned Trial Court failed to consider. It is stated that the impugned order has been passed in a mechanical manner and without appreciating the true and correct facts of the case. Therefore, it is prayed that the present petition be allowed.

5. Learned counsel for respondent no. 2, on the other hand, argues that the petitioner herein has alleged in the present petition that she wants to prove the receipt executed by the son of the complainant and also wants to file the receipt of Rs. 9 lakhs before the learned Trial Court but the same is contradictory to her stand before the learned Trial Court and the petitioner is trying to mislead this Court. It is stated that that the petitioner has not taken any such defense before the Trial Court that she had already returned back Rs. 37 lakhs to the son of the complainant and only Rs. 9 lakhs remained balance. It is further stated that the said receipt showing that Rs. 9



lakhs remain balance, allegedly issued by the son of the complainant, when was produced by the petitioner before the learned Trial Court, an offer was given from the side of the respondent no. 2/complainant that they are ready to admit the receipt if the accused is ready to pay Rs. 9 lakhs, but the counsel for the petitioner had refused to accept such offer of the respondent no. 2 and was taken aback by the suggestion and had refused to admit the said receipt. It is stated that the present petition is liable to be dismissed on the ground that the petitioner has taken different stands at every stage and the same can be verified from her defence taken in notice under Section 251 of Cr.P.C., the defence mentioned in the application under Section 145(2) of Cr.P.C. and also from the statement of accused under Section 313 of Cr.P.C., and lastly from the statement recorded as DW-1. From the above mentioned facts, it is apparent that the petitioners have deliberately concealed the material facts from this Court. It is further stated that the petitioner has also mentioned in the present petition that the amount of Rs. 9 lakhs was the balance amount which had been paid by the petitioner and her husband and further that they were in possession of the receipts of Rs. 37 lakhs and Rs. 9 lakhs, but the petitioner has not filed the copy of such receipts with the present petition to prove the correctness of her allegations. Therefore, it is submitted that the present petition is liable to be dismissed.

6. This Court has heard arguments addressed by both the parties and has gone through the material placed on record.



7. In the present case, this Court notes that the complainant had alleged that on the asking of the accused i.e. the petitioner, he had given a friendly loan of Rs. 10 lakhs to the accused, to be repaid within a period of 15 days. However, the cheque handed over to the complainant by the accused/petitioner was dishonored upon its presentation, pursuant to which the complaint under Section 138 of NI Act was filed.

8. As far as the stand or the version of the accused/petitioner is concerned, at the stage of framing of notice under Section 251 of Cr.P.C., the petitioner had admitted her signatures on the cheque, although she had denied knowing the accused personally and had taken a defence that there was a dispute between her son and the complainant's son, and her son had given the cheque in question to the son of complainant without her knowledge. Thereafter, in the application filed under Section 145(2) of NI Act, the petitioner had averred that she had not obtained any loan from the complainant, and had further disclosed that the cheque in question had been misused by persons who were involved in betting and gambling on cricket etc. and they had induced the son of petitioner to sign some papers and had threatened him to pay Rs. 1 crore, which he had lost in betting.

9. In the cross-examination of complainant, a suggestion was given to him by the counsel for accused that complainant's son had taken the cheque in question from the son of the accused as there were some transactions between them. A suggestion was also given regarding cheque having been misused by the complainant's son Saurabh Dhingra after receiving the same from the son of the



accused, and that the complainant's son had taken an amount of Rs.37 lakhs from the son of accused and also executed a receipt for the same.

10. In her evidence, the petitioner, as DW-1, had deposed that the complainant's son had falsely accused her of owing him money and threatened to sell her house unless she paid him money. Despite having no outstanding dues, she had paid him Rs. 37 lakhs. Later, the complainant's son had also written on a piece of paper that there was an outstanding amount of Rs. 9 lakhs. DW-2 i.e. husband of the petitioner/accused had also deposed on similar lines and stated that he was in possession of receipt of Rs. 37 lakhs, where Rs. 9 lakhs was shown as balance, and the said remaining amount had also been paid later on, by him and his wife.

11. Thus, what is reflected from the aforesaid discussion is that the defence of the petitioner has been that there was some dispute between her son and the complainant's son, and the cheque in question had been misused by the complainant's son. Though the details regarding receipt of Rs. 37 lakhs etc. were not mentioned initially at the time of framing of notice under Section 251 of Cr.P.C. or in the application filed under Section 145(2) of NI Act, the question regarding the same was however put to the complainant at the time of his cross-examination and the details had been further disclosed during the course of defence evidence.

12. In the application filed under Section 311 of Cr.P.C., the petitioner had prayed that since she and her husband i.e. DW-1 and DW-2 respectively had already mentioned about they being in



possession of receipt of Rs. 37 lakhs, they be allowed to place the same on record.

13. In this Court's opinion, the said prayer of the petitioner cannot be termed as vexatious, as held by the learned Trial Court, since the defence witnesses have categorically mentioned about the receipt of Rs. 37 lakhs in their defence evidence, which now they want to only place on record before the Court. As regards the question of delaying the trial, this Court notes that the application under Section 311 of Cr.P.C. was preferred within a few days from the date of closing of defence evidence, thus there is no apparent delay on part of the accused in filing the said application. *Needless to say*, what weight is to be given to such evidence, when analysed in light of law of Section 138 of NI Act, is to be decided by the learned Trial Court at the appropriate stage, after hearing the final arguments.

14. In case of *Zahira Habibullah Sheikh (5) v. State of Gujarat (2006) 3 SCC 374*, the Hon'ble Apex Court while considering the law of Section 311 of Cr.P.C., had made the following important observations:

“27.The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case.”

15. However, as far as the prayer regarding examining third defence witness i.e. son of accused/petitioner is concerned, there is no reasons provided by the petitioner as to why she did not mention



the same earlier in the list of defence witness before the learned Trial Court. Even otherwise, the cheque has been issued by the present petitioner and she has already admitted her signatures on the same. Further, DW-1 and DW-2 have already got their testimony recorded before the learned Trial Court in which they given in detail as to what is their version regarding issuance of cheque and liability, if any, towards which the cheque was issued and in what circumstances. Thus, there are no justifiable reasons to allow the application under Section 311 of Cr.P.C. insofar as it prays for examination of DW-3.

16. Considering the settled law of Section 311 of Cr.P.C. and the overall facts and circumstances of the case, the impugned order dated 28.11.2019 is set aside partially, and the application filed under Section 311 of Cr.P.C. is allowed to the extent that the petitioner is allowed to place on record the receipts pertaining to amount of Rs. 37 lakhs, as claimed by petitioner. However, the same shall be done by the petitioner in one single opportunity, on the date so fixed by the learned Trial Court, and the petitioner or the counsel for petitioner shall not seek any adjournment before the learned Trial Court. This shall also be subject to a condition that the petitioner shall pay a cost of Rs.10,000/- to the complainant before availing the said opportunity, since the complaint case filed under Section 138 of NI Act has been pending since the year 2017 before the learned Trial Court.

17. In above terms, the present petition is disposed of.



18. It is however clarified that the observations made in this order shall not tantamount to expression of opinion on the merits of the case during the course of trial.

19. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 25, 2024/ns