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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 3175/2023 & CRL.M.A. 11919-20/2023**

M/S PAL NEWS MEDIA PVT. LTD. Petitioner
Through: **Mr. Parul Agarwal and Ms. Muskan Mahajan, Advocates.**

versus

M/S PLANETEASE MEDIA SERVICES LTD Respondent
Through: **Mr. Saurabh Kaushik, Ms. Jemini and Ms. Bhavna Sharma, Advocates.**

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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11.07.2024

1. By way of present petition, filed under Section 482 Cr.P.C., the petitioner assails the order dated 08.12.2022 passed by learned Judicial Magistrate, First Class, NI Act, New Delhi in C.C. No. 3092/2020 whereby the respondent's application under Section 311 Cr.P.C. and Section 91 Cr.P.C for recalling a witness and placing on record relevant documents was allowed.

2. Present proceedings arise out of the proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881 by the complainant/respondent herein against the accused/ petitioner herein. The allegations in the complaint are that the accused had availed the up linking and bandwidth services of the complainant company for their TV channel and had issued a cheque in discharge of their outstanding amount for the said services, which was returned dishonoured.

3 Learned counsel for the petitioner being aggrieved by the impugned



order states that the same is based on conjectures and surmises and therefore, is bad in law. He further submits that the Trial Court has failed to appreciate that the said application was moved by the respondent to fill up the lacuna of evidence of CW-1 i.e. the Authorised Representative of the complainant company, Sh. Gitanshu Rastogi and hence is contrary to settled law. In addition, it is also submitted by the counsel for the petitioner that the additional documents in question were available with the complainant company at the time of filing of the complaint and thus ought to have been filed at the stage of filing of the complaint.

4. Learned counsel for respondent has opposed the said application.

5. I have heard the learned counsels for the parties and have perused the records.

6. The complainant had moved the instant application to summon one Jeeban Sekhar Tripathy who is employed in the capacity of Senior General Manager, Revenue Assurance Department and Management Information Systems in the complainant company as CW2. A perusal of the impugned order and the Trial Court records would reveal that during the cross-examination of CW-1, reference was made to the invoices raised by the complainant company, exhibited as Ex.CW1/7, to which CW-1 deposed that the same were prepared by the revenue assurance department of the complainant company, however no specific person in-charge could be identified. The Trial Court observed that the relevance of the invoices also emerged as a suggestion was given by the learned counsel for the accused that the same were fabricated. Questions were also put by the Learned Counsel for the accused with respect to the documents which the complainant sought to produce by way of the said application.



7. This Court is inclined to concur with the decision of the Trial Court. The plain reading of Section 311 Cr.P.C. reflects that the same provides recourse to section at any stage of the trial. Fair trial is the hallmark of criminal procedure. It is the duty of the criminal court to ensure that fair and proper opportunity is granted to the parties to adduce evidence for the just decision of the case. Such adducing of evidence by the parties is a valuable right. In Natasha Singh v. CBI reported as **(2013) 5 SCC 741**, the Supreme Court has observed:-

“16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person’s right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such a right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same.”

8. The production of the said witness for examination along with the relevant documents appears essential for the purpose of arriving at a just decision in the case. The documents sought are merely additional in nature, required for appreciating existing evidence and there is nothing on record by the accused to show that the said documents would impair or prejudice his rights in any manner.

9. Considering that the underlying complaint relates to an offence under Sections 138, NI Act and keeping in mind that denying the complainant the



opportunity to produce the relevant evidence would gravely prejudice its case, this Court finds no ground to interfere with the order of the Trial Court, consequently, the petition is accordingly dismissed alongwith pending application.

MANOJ KUMAR OHRI, J

JULY 11, 2024/js