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

+ **CRL.M.C. 2739/2024**

PRAVEEN KUMAR BANSAL Petitioner
Through: Mr. Ajay Khatana, Mr.
J.K. Sharma, Mr. Rahul
Chaudhary, Mr. Daya &
Mr. Jitin Kumar, Advs.

versus

SURESH CHAND AND ANR. Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
05.04.2024

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CRL.M.A. 10424/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 2739/2024 & CRL.M.A. 10425/2024 (for stay)

3. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), challenging the order dated 16.08.2023 (hereafter '**impugned order**'), passed by the learned Metropolitan Magistrate ('MM'), North-West District, Delhi, in Complaint Case No. 490/2020.
4. The learned MM, by the impugned order, had dismissed the application filed by the petitioner under Section 311 of the CrPC, seeking recall of the complainant for the purpose of cross-examination.
5. The learned counsel of the petitioner submits that the application preferred by the petitioner under Section 311 of the



CrPC has been erroneously dismissed. He submits that the matter had come up for cross- examination by way of last opportunity and the learned Trial Court had closed the right of the petitioner to cross-examine the complainant due to non-appearance of the petitioner on 15.11.2022.

6. The petitioner preferred a revision petition before the learned Sessions Court seeking setting aside of the impugned order which was dismissed in *limine* by order dated 13.02.2024, observing that the dismissal of application under Section 311 of the CrPC is interlocutory in nature and therefore, cannot be challenged by way of a revision petition.

7. The learned MM in the impugned order noted that due opportunity was given to the accused to cross-examine the witness. The learned MM also noted that the order sheet records that despite given opportunities, the accused has failed to cross-examine the complainant. On 30.07.2022, proxy counsel sought adjournment since the main counsel was not available and last opportunity was afforded to the petitioner to cross examine the respondent. On 07.09.2022, the counsel for the petitioner had partly cross examined the respondent and the matter was adjourned. On 15.11.2022, the matter was passed over since the petitioner did not appear and thereafter, despite repeated calls – the petitioner did not appear and the counsel was also not present before the learned MM whereafter, the right to cross examine the complainant stood closed. On 19.12.2023, the learned MM had issued NBW against the petitioner since he was not appearing. On 16.08.2023, the NBW issued stood cancelled and an application under Section 311 of the CrPC was moved by the petitioner to cross examine the complainant which was dismissed by the impugned order.

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8. The learned MM by the impugned order, while dismissing the application under Section 311 held as under :

“Perusal of the record reveals that despite given opportunities, the accused has failed to cross examine the complainant. Hence the application u/s 311 Cr.PC stands dismissed.”

9. Section 311 of the CrPC is a procedure for recall of witnesses which can be permitted in order to prevent failure of justice and is not to be allowed in every case in a mechanical manner. The applicant seeking recall under Section 311 of the CrPC, has to specifically show and give tangible reasons as to how the fairness of trial will suffer.

10. It is not denied that the complainant was partly cross-examined at length on 07.09.2022.

11. In such a case, it cannot be said that the petitioner did not understand the consequences or that he was bereft of proper legal assistance during the stage of cross-examination.

12. The Hon'ble Supreme Court in ***RE: Expeditious Trial of Cases Under Section 138 of N.I. Act : 2021 SCC OnLine SC 325***, noting the huge pendency of complaints under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') and their adverse effect in disposal of other criminal cases, directed the High Courts to issue practice directions to the Magistrate. It was noted that Section 143 of the Act was introduced as step in aid for quick disposal of the complaints under Section 138 of the N. I. Act. It was held that it is sufficient for the Magistrate to record the substance of the evidence and deliver a judgment containing a brief statement of reasons for his findings and the Magistrate must give reasons for converting the trial from summary trial to summons trial.

13. In such a case, if applications under Section 311 of the
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CrPC are allowed in a routine manner, especially, in proceedings in relation to NI Act, the purpose of incorporation of Section 143 to 147 in the Act would be defeated, which was inserted by the legislature to address the huge pendency of complaints filed under Section 138 of NI Act, as the same had an adverse effect on disposal of other criminal cases. The complaint in the present case is pending since the year 2020.

14. It is apparent from the perusal of the application filed by the petitioner that nothing has been pleaded which would justify the recall of witness or which is essential for a just decision of the case. Vague averments have been made that recall of the witness is required as the petitioner failed to examine certain important aspects that were vital to the case. The petitioner has not indicated what are these factors, or how they escaped the notice of the petitioner despite the lapse of one year between the two dates when cross-examination was conducted.

15. It is also apparent that the only purpose of filing the application was to delay the proceedings.

16. In view of the above, this Court finds no infirmity with the impugned order passed by the learned MM, and the present petition being without any merits is dismissed. Pending application is also disposed of.

AMIT MAHAJAN, J

APRIL 5, 2024

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