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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 2841/2024 AND CRL.M.A. 10814/2024
M/S THARUN VAC & ORS.Petitioners

Through: Mr. Suresh Kumar Sharma, Adv.

versus

LALIT MOHAN TIWARIRespondent
Through: Mr. Parth Chaturvedi, Mr. Girish
Upadhyay and Mr. Yakshay Auluck,
Adv.

+ CRL.M.C. 2842/2024 AND CRL.M.A. 10816/2024
M/S THARUN VAC & ORS.Petitioners

Through: Mr. Suresh Kumar Sharma, Adv.

versus

LALIT MOHAN TIWARIRespondent
Through: Mr. Parth Chaturvedi, Mr. Girish
Upadhyay and Mr. Yakshay Auluck,
Adv.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% **05.09.2024**

1. Petitions under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') have been preferred on behalf of petitioners (accused in proceedings under Section 138 NI Act) for setting aside order dated 02.12.2023 passed by learned MM (NI Act), Karkardooma Court, Delhi, whereby applications under Section 91 Cr.P.C. preferred on behalf of



respondent (complainant in proceedings under Section 138 NI Act) to bring additional documents on record were allowed.

2. In brief, as per the case of respondent, documents as referred in the impugned order i.e., partnership deed, email correspondence and balance sheet, were sought to be brought on record prior to leading of complainant evidence as the same could not be filed alongwith the complaints.

3. On the other hand, order allowing applications under Section 91 Cr.P.C. for bringing additional documents on record, are opposed by learned counsel for petitioners on the ground that there is no provision permitting to file all the additional documents, and complainant cannot be permitted to fill lacuna in a complaint case. The contentions raised by the petitioners before the learned Trial Court are further reiterated before this Court.

4. Section 91 Cr.P.C. provides that whenever any court or any officer incharge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

5. This Court is of the considered opinion that in order to draw presumption under Section 139 of NI Act, the initial burden lies on the complainant. It is for the complainant to decide and prove the necessary documents relied by him to prosecute his case and accused cannot object to the same, unless some prejudice is shown for permitting the complainant to produce such additional documents in his own possession.



There does not appear to be any bar for the purpose of production of documents which may be necessary for the purpose of trial and enable the parties to fairly present the case before the learned Trial Court for just decision of the case. The production of said documents does not prejudice the petitioners in any manner since the evidence on behalf of complainant is yet to be commenced.

6. In the facts and circumstances of the case, I do not find any reasons to interfere in the impugned order dated 02.12.2023 passed by learned MM (NI Act), Karkardooma Court, Delhi, since the documents appear to be necessary for the purpose of discharging burden cast on the complainant.

Petition is accordingly dismissed. Interim orders accordingly stand vacated. Pending application if any, also stands disposed of.

A copy of this order be forwarded to learned Trial Court for information.

A copy of this order be kept in connected petition.

ANOOP KUMAR MENDIRATTA, J

SEPTEMBER 5, 2024

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