$~34

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

\+ CRL.M.C. 4438/2023 & CRL. MA 16998/2023

M/S GOEL TRADING COMPANY .....Petitioner

Through: Mr. Ayush Kumar, Advocate (M:8860214345).

versus

THE STATE & ANR .....Respondents

Through: Mr. Nawal Kishore Jha, APP for State None for respondent no.2.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

<u>O R D E R</u>

% **17.09.2024**

1. Notice of the instant petition was issued and the reply was also filed. However, no appearance has been entered on behalf of the respondent No.2. Even on the last date of hearing, respondent No.2 remained unrepresented. In this backdrop, the Court proceeds to hear the instant petition.

2. By way of present petition, the petitioner seeks to assail the order dated 01.03.2023 passed by the learned Judicial Magistrate First Class-04, Shahdara, Karkardooma Courts, Delhi, vide which the petitioner's application filed under Section 311 Cr.P.C to place on record additional documents in the form of tax invoices, credit notes and general vouchers in support of the statement of accounts already filed and exhibited by the petitioner, as well as for allowing the petitioner to re-examine herself and her husband, *Mr. Ashok Kumar Goel* as a witness, was dismissed.

3. The present proceeding arises in the context of a complaint filed under Section 138 NI Act. The petitioner claims that immediately after the

examination of the complainant, the subject application was filed to bring on record the aforenoted documents.

4. Learned counsel for the petitioner contends that in the subject complaint, the petitioner has claimed that it had kept regular books of account of all the transactions with the accused in the normal course of business and that the respondent No.2/accused was indebted to the petitioner for a sum of Rs.4,64,644/-. It was also claimed that the complainant had supplied the subject cosmetic goods on different dates through various invoices. He further submits that though a statement of account was exhibited, the invoices, credit notes and general vouchers were inadvertently not placed on record. It is also contended that the said application was filed even before the defence evidence commenced. Moreover, it is stated that presently, the case is still at the stage of defence evidence. Furthermore, learned counsel submits that even as per the case of the respondent No.2, at the time of recording of the testimony of the sole proprietor of respondent No.2 company, it has been stated that the goods were supplied by the husband of Smt. Simmi Goel, the sole proprietor of the petitioner company, who also used to give an acknowledgement with respect to the amount in cash.

5. I have perused the paper book including the reply filed on behalf of the respondent No.2.

6. The respondent No.2 has defended the impugned order by contending that allowing an application under Section 311 Cr.PC would amount to review of the order of the Trial Court. Further, reference is made to the decisions in U.T. of Dadra & Nagar Haveli and Another v. Fatehsinh Mohansingh Chauhan, **(2006) 7 SCC 529** and Swapan Kumar Chatterjee v.

CBI, **(2019) 14 SCC 328** to the extent that the court has to take note of all the barriers and safeguards to be taken care of while considering an application under Section 311 Cr.P.C so that the party applying for it may not use it to fill lacunae in its case. It is also submitted that in pre-summoning and post-summoning evidence, the petitioner has not stated about these documents.

7. It is noted that even during the course of the respondent No.2's cross-examination, certain invoices are stated to be put to him, which were also admitted. The petitioner claims to place the remaining invoices/credit notes and general vouchers on record. During the course of submissions, learned counsel for the petitioner has handed over a copy of the complaint filed before the Trail Court. A reading of paragraphs 3 and 4 of the said complaint would show that there is a mention of the aforesaid invoices.

8. Considering the fact that the subject complaint already speaks about the said invoices, credit notes and general vouchers, this Court is of the view that the Trial Court erred in passing the impugned order. Consequently, the subject application is allowed, subject to the cost of Rs.5,000/- to be paid to the respondent No.2 by the petitioner.

9. In view of the foregoing discussion, the petition is allowed and the impugned order is set aside.

10. The petition is disposed of in above terms along with pending application.

MANOJ KUMAR OHRI, J

SEPTEMBER 17, 2024/*rd*