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

+ **CRL.M.C. 5952/2023**

HEMANT KUMAR GUPTA

..... Petitioner

Through: Mr.Krishan Kumar, Advocate

versus

THE STATE & ORS.

..... Respondents

Through: Mr. Nawal Kishore Jha, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **27.03.2024**

CRL.M.A. 22345/2023 (exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CRL.M.C. 5952/2023 and CRL.M.A. 22344/2023

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner is aggrieved by the observations made during the cross-examination of respondent No.2 (called as CW-1 before the trial court) dated 07.07.2023 to the extent that the following question sought to be asked by the petitioner came to be disallowed:-

“Q. Have you received Rs.1,25,000/- from accused No.1 on 02.01.2017?”

2. Learned counsel for the petitioner submits that the petitioner has been impleaded as a Director by the respondent No.2/complainant in the



proceedings initiated under Section 138 read with Section 141 NI Act. Besides petitioner, the complainant also arrayed the authorized signatory as well as the company. While the authorized signatory has expired, proceedings under IBC have been initiated against the accused company and for which reason there is no representation on its behalf before the trial court.

Learned counsel submits that the aforementioned question is necessary to be put to the complainant as the accused company had already discharged its liability. He submits that the said question is both necessary and relevant as in case the complainant has received the sum under the subject cheque then no question of discharge of debt or liability would arise. He submits that the said question was disallowed only for the reason that the same was asked by the petitioner and not the accused company. He submits that the accused company has remained unrepresented and thus there being no other accused, the said question was needed to be put by the petitioner to prove his defence.

3. The petition is resisted by learned counsel for respondent No.2, who submits that at the time of framing of notice under Section 251 Cr.P.C., the petitioner had not taken the said defence.

4. A perusal of the order framing notice dated 08.12.2021 would show that at that time, the petitioner had taken a defence that he was a Non-Executive Director of the Company, who had even otherwise resigned prior to the issuance of the cheque.

5. In the considered opinion of this Court, the said defence taken at the stage of framing of notice would not of itself limit the petitioner from contending that the liability was even otherwise discharged by the accused company. The question sought to be asked by the petitioner was both



relevant and necessary. Accordingly, the petition is allowed and the observation of the trial court qua the said question is set aside.

6. It is informed that the next date of hearing before the trial court is 01.07.2024, when the said witness has been called for remaining cross-examination. Learned counsel for the petitioner assures that he will make an endeavour to complete the cross-examination on the next date of hearing or immediately thereafter.

7. In view of the above, the petition is disposed of alongwith the pending application.

MANOJ KUMAR OHRI, J

MARCH 27, 2024

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