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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 4500/2024 & CRL.M.A. 16989/2024**

SUBHASH CHAND

..... Petitioner

Through: Mr. Atul Kumar, Mr.
Vijay Datt Gahtori, Mr.
Priyank K. & Mr. Rakesh
Datt Gahtori along with
petitioner.

versus

MANOJ BALHARA

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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29.05.2024

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

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3. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeking quashing of the order dated 20.05.2024 (hereafter '**the impugned order**'), passed by the learned Metropolitan Magistrate ('MM'), South West District, Dwarka Courts, in Ct. Case No. 12408/2017 titled as '*Manoj Balhara v. Subhash Chand*'.

4. The learned MM, by the impugned order, dismissed the application filed by the petitioner under Section 311 of the CrPC with a cost of ₹50,000/-. It was directed that the cost be paid to the complainant/ respondent. The learned MM also issued fresh NBWs against the petitioner.

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5. The learned counsel for the petitioner submits that the matter was erroneously entertained by the learned MM and the same should have been heard by another MM.

6. The present petition is a classic case of abuse of process of the Court. The learned MM while passing the impugned order has specifically noted that he has been assigned the additional charge of MM (NI Act, 09) pursuant to the order dated 03.04.2024, passed by the Hon'ble High Court. It was noted that by order dated 15.05.2024, the Court of MM-09 was assigned to Ms. Astha Sharma, learned MM, however, in cases where the judgments were reserved, it was directed that the same shall be pronounced by the Judicial Officer who has reserved the judgment.

7. In the present complaint case, bearing Cr Case No. 12408/2017, it was noted that the judgment was reserved by the learned MM (who has passed the impugned order) *vide* order dated 15.04.2024 when he was discharging his duty as learned MM (NI Act-09).

8. It was noted that the matter was thereafter fixed for passing of the judgment on 03.05.2024. The petitioner / accused did not appear as he was in judicial custody in another case and the matter was then fixed for 09.05.2024 after issuing production warrants of the petitioner.

9. The matter was thereafter fixed on 15.05.2024 for the appearance of the petitioner and the NBWs were issued on the said date.

10. The matter was then adjourned to 20.05.2024 and on the said date, the petitioner / accused filed an application under Section 311 of the CrPC along with another application seeking exemption from presence. The petitioner sought summoning of the two witnesses who were witnesses to a document Ex.CW1/1
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and also sought re-examination of the complaint.

11. The learned MM noted that the defence evidence in the matter was closed way back on 06.03.2022 and no application under Section 311 of the CrPC for summoning of witnesses had ever been filed despite the petitioner / accused having ample opportunities. Looking at the conduct of the petitioner, the application was dismissed by the impugned order.

12. 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.

13. It is apparent from the perusal of the application filed by the petitioner is bereft of reason. Only vague averments have been made that summoning of the witnesses is required and re-examination of the complainant is necessary for furnishing the details of witness no.2 in Ex. CW1/1, however, no reason is adduced as to why the same is essential for a just decision of the case.

14. 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 NI Act. It was held that it is sufficient for the Magistrate to record the substance of the evidence and deliver a judgment containing a
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brief statement of reasons for his findings and the Magistrate must give reasons for converting the trial from summary trial to summons trial.

15. In such a case, if applications under Section 311 of the 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.

16. The learned MM has explicitly elaborated his competence to adjudge the application tendered by the petitioner.

17. The petitioner has not contested that he was not granted ample opportunity to summon the aforesaid witnesses previously.

18. In view of the above, this Court finds no infirmity in the order passed by the learned MM. As observed by the learned MM, the petitioner / accused has clearly abused the process of the Court.

19. It is apparent that the only purpose of filing the application after a number of dates of reserving of the judgment in the matter was to delay the proceedings.

20. The present petition is therefore dismissed with a cost of ₹50,000/-, to be paid to the Delhi High Court Mediation and Conciliation Centre, within a period of four weeks from date.

21. Proof of deposit of cost is to be furnished to the Registry of this Court.

AMIT MAHAJAN, J

MAY 29, 2024/“SK”