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

+ **CRL.M.C. 5128/2024, CRL.M.A. 19557/2024**

ANAND PAL MALIK

.....Petitioner

Through: Petitioner in person.

versus

STATE NCT OF DELHI AND ANR

.....Respondents

Through: Ms. Manjeet Arya, APP for the State.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

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25.07.2024

CRL.M.A. 19558/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.M.C. 5128/2024, CRL.M.A. 19557/2024

1. Petition under Section 482 of the Code of Criminal Procedure, 1973, ('Cr.P.C.), has been preferred by petitioner for setting aside the impugned order dated 08.04.2024 passed by the learned Additional Sessions Judge, whereby Revision Petition preferred on behalf of the petitioner against order dated 08.01.2024 passed by learned MM was dismissed.
2. Petitioner is aggrieved against dismissal of his application under Section 311 Cr.P.C. by the learned MM as well as the order being upheld by the learned Revisional Court.
3. Learned APP for State appears on advance notice on behalf of respondent No. 1.



4. Petitioner in person has refused to seek aid of legal aid counsel and submits that he would prefer to argue in person. He informs that petition has been got drafted with the aid of a counsel, known to him.

5. In brief, the case of the complainant/respondent no. 2 in complaint under Section 138 NI Act is that the petitioner/accused had taken a loan of Rs. 16 lakhs, out of which Rs. 10 lakhs was given by respondent No.2 and remaining amount by his *Bhabhi*. Petitioner is stated to have issued seven (07) cheques in the name of complainant /respondent no. 2 and three cheques in the name of his *Bhabhi* (sister in law). Out of the said seven cheques, cheque no. 778956 dated 15.10.2019 of Rs. 50,000/- stood dishonoured upon presentation with remarks "Funds Insufficient". Respondent no. 2/complainant issued legal notice on dishonour but despite service of notice, petitioner failed to make payment of said amount. As such, complaint under Section 138 NI Act was filed. Petitioner is also alleged to have played a fraud as he had also taken loan from another agency against the same property, in order to discharge his liability to repay the loan amount.

6. Learned counsel for petitioner cross-examined the complainant at length on 15.03.2023, but on 08.01.2024, an application under Section 311 Cr.P.C. was preferred by the petitioner for recalling the complainant for cross-examination on the ground that counsel for petitioner was unable to cross-examine CW-1/complainant in totality. Learned MM dismissed the application vide order 08.01.2024 observing that mere change of counsel on part of petitioner cannot constitute a ground for recalling the complainant and all the facts stated in the application were already in the knowledge of petitioner at relevant time when the complainant was cross-examined.



Petitioner aggrieved by aforesaid order passed by learned MM preferred a Revision Petition which was dismissed by learned ASJ vide order dated 08.04.2024.

7. Petitioner reiterates the contentions raised before the Revisional Court and submits that CW-1 could not be effectively cross-examined as several questions have been left in cross-examination. He further disputes the liability and submits that cheque in question was stolen and has been misused by the complainant/ respondent No. 2.

8. Learned Revisional Court duly noticed that the petitioner in his statement under Section 294 Cr.P.C. admitted his signatures on the said cheque dated 15.10.2019 of Rs. 50,000/- issued by him. It was further observed that CW-1 was cross-examined by the counsel for the petitioner at length in the presence of petitioner and there was no reason that the petitioner could not have asked the counsel to put up any further relevant questions. Learned Revisional Court was further of opinion that the witness could not be recalled only for the reason that the petitioner is not satisfied with the cross-examination and the Revision had been filed only to delay the proceedings.

9. Perusal of cross-examination of CW-1 (complainant) reveals that the witness was cross-examined at length in about three pages putting relevant questions. Petitioner cannot be permitted to recall the witness merely to fill the lacunae or on the ground that he is not satisfied with cross-examination. Cogent reasons have been given by learned Trial Court as well as learned Revisional Court for dismissing the application under Section 311 Cr.P.C. which do not call for interference by this Court, in the facts and circumstances of the case.



Petition is devoid of any merits and is accordingly dismissed. Pending applications, if any, also stand disposed of.

ANOOP KUMAR MENDIRATTA, J.

JULY 25, 2024

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