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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 5370/2024**
AJAY TANEJAPetitioner
Through: **Mr. Shikhar Mittal, Mr. Shantanu A.**
and Mr. Rishabh Sharma, Advs.

versus

M/S WAHI JEWELLERSRespondent
Through: **Mr. Rajesh Samanotra and Mr. Varun**
Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

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16.07.2024

CRL.M.A. 20542/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.M.C. 5370/2024 & CRL.M.A. 20543/2024

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner against order dated 13.03.2024 passed by learned M.M. (N.I. Act), West, Tis Hazari Courts, New Delhi, whereby an application under Section 91 Cr.P.C. filed by petitioner (accused in proceedings under Section 138/142 of Negotiable Instruments Act), was declined.
2. Mr. Rajesh Samanotra, Advocate for respondent appears on advance notice.
3. In brief, the dispute between the parties relates to dishonour of two cheques for Rs. 12,27,195/- and Rs. 13,12,745/- issued by the petitioner in



favour of respondent in July 2020 against purchase of certain jewellery items. The case of the petitioner is that the aforesaid jewellery items were never delivered to the petitioner. Further, a complaint is stated to have been lodged with the police in April 2021, though the cheques were dishonoured in the month of August 2020 and proceedings under Section 156(3) Cr.P.C. were thereafter initiated.

4. Learned counsel for the petitioner submits that the documents referred in application under Section 91 Cr.P.C. are essential for the purpose of defence of the petitioner. Reliance is further placed upon ***Suresh Kalmadi vs. CBI***, 2015 SCC OnLine Del 9639.

5. On the other hand, the case of respondent is that despite delivery of the jewellery items, the cheques issued by the petitioner were dishonoured. He further submits that if jewellery items were not received by the petitioner, normally the payment of cheques would have been stopped instead of permitting the respondent to present the cheques, which were dishonoured on 29.08.2020. Learned counsel for respondent also emphasises that the documents sought on behalf of the petitioner are not relevant and the application had been filed merely to delay the proceedings, which are pending for cross examination of the complainant, since 08.12.2022.

6. There is no dispute on the proposition that under Section 91 Cr.P.C., the Court can consider production of any document from the person in whose possession or power such documents are believed to be, if it is necessary or desirable for the purpose of trial.

Reverting back to facts of the case, if the jewellery items were not delivered against the cheques issued by the petitioner, in normal course of conduct, the payment of cheques could have been stopped instead of



permitting the same to be later dishonoured, since the disputes between the parties on the point of delivery had already arisen. The explanation of the petitioner in respect of the documents sought under Section 91 Cr.P.C. has been dealt in detail by the learned Trial Court. Appropriate adverse inference against the complainant on the point of sale and delivery, can be duly drawn by the learned Trial Court, on the basis of cross examination of complainant, if the explanation for non-production of any relevant documents is not found to be convincing.

7. Considering the totality of facts and circumstances, no grounds are made out for interfering with the impugned order. Petition is accordingly dismissed. Pending applications, if any, also stand disposed of.

Nothing stated herein shall tantamount to expression of opinion on the merits of the case.

ANOOP KUMAR MENDIRATTA, J

JULY 16, 2024/akc