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

+ CRL.M.C. 5719/2024,CRL.M.A. 21838/2024

+ CRL.M.C. 5722/2024,CRL.M.A. 21851/2024

NARESH ARYA

.....Petitioner

Through: Mr. Nagendra Kasana, Mr.Rajesh
Rathod, Mr.Rahul Srivastava,
Mr.Sandeep Singh,
Ms.ShivaliBidhuri, Mr. Mubarik
Hussain, Advs.

versus

ARPIT AGGARWAL

.....Respondent

Through: Mr. Akshay Srivastava, Mr.
SuryanshVashishth, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

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26.07.2024

CRL.M.A. 21839/2024 (Exemption) in CRL.M.C. 5719/2024

CRL.M.A. 21852/2024 (Exemption) in CRL.M.C. 5722/2024

Exemptions are allowed subject to all just exceptions.

CRL.M.C. 5719/2024 and CRL.M.C. 5722/2024

1. The present petitions have been filed under section 528 BNSS challenging the order dated 08.07.2024 whereby the application under Section 311 Cr.PC read with Section 315 Cr.PC for reopening/recalling of defence witness in complaint case 46759/2016 NI Act in CRL.M.C. 5719/2024 and in complaint case 46758/2016 CRL.M.C. 5719/2024.



2. The brief facts of the present case are that the petitioner is accused in a complaint case (no. 46759/2016) registered on 03.06.2017 under Section 138 of the Negotiable Instruments Act (NI Act). The case revolves around dishonoured cheques, which the respondent claims were issued by the petitioner as repayment for a friendly loan. The petitioner denies this claim, stating that the cheques were given as security in a property transaction. The petitioner and the respondent entered into an agreement for the sale of land owned by the petitioner. The respondent paid Rs 50,00,000 as earnest money through a bank transaction. The petitioner handed over cheques to the respondent as security, pending the finalization of the property sale after document verification. The property documents were verified and found genuine, but the respondent failed to complete the registry and pay the remaining amount. The petitioner alleges that the respondent misused the security cheques by presenting them for payment, resulting in their dishonour, and then filed a complaint under Section 138 NI Act, falsely claiming the cheques were for repayment of a friendly loan. The respondent's evidence and cross-examination took place in January and April 2023. The petitioner argues that the respondent failed to provide substantial proof of the alleged friendly loan, particularly the cash component. The petitioner claims that the Learned Trial Court erred by not allowing the agreement between the parties to be placed on record, which is crucial to the petitioner's defence. The petitioner filed an application to recall the respondent (CW-1) and reopen the defence evidence to bring the agreement on record. The Learned Trial Court dismissed this application on



08.07.2024 and scheduled the case for judgment on 29.07.2024.

3. Learned Trial Court in the impugned order dated 08.07.2024 had noted that evidence of the petitioner/accused was closed vide order dated 16.03.2024. The perusal of the order dated 16.03.2024 indicates that the matter was fixed for 25.09.2023 which was adjourned for 02.11.2023, 10.11.2023, 02.12.2023 and 12.01.2024 and all the adjournments were taken by the petitioner before the learned Trial Court.
4. Again on 21.02.2024 the adjournment was sought and the matter was adjourned for 16.03.2024. On 16.03.2024, the learned Trial Court observed that the petitioner/ accused is deliberately trying to delay the adjudication of the matter and refused to grant further opportunity to lead DE. The matter was adjourned for final arguments on 18.04.2024. An application under Section 311 Cr.P.C. r/w Section 315 Cr.P.C. was moved. Learned Trial Court vide the impugned order noted that the present application was moved while the matter was listed for the judgment. In the impugned order learned Trial Court had specifically mentioned that the accused had ample opportunities to lead DE and despite the same accused miserably failed to take steps to lead DE.
5. Learned Trial Court noted that the conduct of the accused was such that he was not diligent in pursuing the present case. Learned Trial Court noted that the accused had failed to avail the opportunities of leading DE despite sufficient opportunities being given.
6. The perusal of the order indicates that the learned Trial Court has passed a detailed and reasoned order rejecting the application under



Section 311 Cr. PC.

7. In **V.K. Verma v. CBICRL.REV.P. 830/2017** it has been inter alia held as under:

“66. The revisional jurisdiction is not meant to test the waters of what might happen in the trial. The Revisional Court has to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of the court below. While doing so, the Revisional Court does not dwell at length upon the facts and evidence of the case, rather it considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence. In the instant case, the Petitioner has failed to make out a case for exercise of the revisional jurisdiction since there is no patent error in the impugned order on the face of record.

67. Further, as per the settled position of law the jurisdiction under Section 482 has to be exercised sparingly, with circumspection and in rarest of the rare cases, only to prevent abuse of the process of any Court or to secure the ends of justice. In the instant case, there is no such abuse of process or that the ends of justice warrant the exercise of the said jurisdiction, therefore there is no cogent reason warranting the exercise of the jurisdiction.”

8. In **Sunil v. State CRL.REV.P 514/2022** it was inter alia held as under

“7. The scope of revisional jurisdiction is very limited. The Courts can exercise its revisional jurisdiction only if there is patent illegality, perversity, jurisdictional error, or an error apparent on the face of the record. In revisional jurisdiction, the Courts cannot substitute its opinion with that of the Courts below. Where two views are possible and the trial court has taken one view which is a plausible view, merely because another view is possible, the High Court should not interfere, and would be in error in interfering with the findings of the trial court in its revisional jurisdiction. High Courts cannot reappraise evidence and come to a different conclusion. The revisional jurisdiction operates within



narrow contours and can be exercised only in exceptional cases where the interest of public justice so requires such an interference, to rectify a gross miscarriage of justice. In absence of any manifest error of law or procedural defects, the High Courts should refrain from interfering with the order of trial court in its revisional jurisdiction. The revisional court does not function as a court of appeal and the Court cannot re appreciate evidence. Revisional jurisdiction is normally exercised only in exceptional cases where there is a glaring defect in the procedure or there is a manifest error of law and consequently there has been a flagrant miscarriage of justice. The High Court cannot interfere with findings of fact of the learned trial Court which have been arrived at after due consideration and appreciation of evidence and material on record.”

9. The revisional jurisdiction is very limited and the Court can interfere only when there is infirmity or illegality in the order of the learned Trial Court. The revisional jurisdiction cannot substitute its own view with the view of the impugned order only if there is another possible view. The view taken by the learned Trial Court is a plausible view and I do not find any perversity or illegality in the order of learned Trial Court. Hence, both the petitions along with pending applications stand dismissed.

DINESH KUMAR SHARMA, J

JULY 26, 2024

Pallavi/AR