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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 6317/2019**

D S KUNDU

.....Petitioner

Through: Petitioner-in-Person.

versus

PHILIPS CGHS LTD.

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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16.07.2024

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') praying as under:

"It is respectfully prayed that record of revision court may kindly be sent for & perused by this Hon'ble court and impugned order dated 13-02-2017 (ANNEXURE P-1) be set aside. Further prayed, revision court be directed to correct the records & clarify the order dated 30-05-2016 (ANNEXURE P-3) after grant of effective opportunity of hearing to the petitioner. Hence, kind indulgence of this Hon'ble court craved as prayed for & correct the wrong done by revision court.

Any other appropriate direction or order as deemed fit by this Hon'ble court in the facts & circumstances of the case & in the interest of justice, equity & fair play."

2. The learned Special Judge, Dwarka Courts, New Delhi, by order dated 30.05.2016, in CR No.33/2016, had dismissed the revision petition filed by the petitioner against the order dated 02.03.2016, whereby the learned Trial Court had summoned the petitioner as an accused for the offence under Section 138 of the Negotiable Instruments Act, 1881.

3. The petitioner thereafter moved an application seeking

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clarification and correction in the order dated 30.05.2016. The petitioner was essentially aggrieved that the learned Revisional Court had erroneously placed reliance on the judgment in the case of *M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd. : (2002) 1 SCC 234* without affording an opportunity to the petitioner to rebut the same. It was further stated that the position of law had been clarified by the Hon'ble Apex Court in the case of *A.C. Narayanan v. State Of Maharashtra : 2014 (11) SCC 790*.

4. The learned Special Judge, by order dated 13.02.2017 (hereafter '**the impugned order**'), in MA No.02/2016, had dismissed the miscellaneous application filed by the petitioner by observing that the application was in the nature of a review and the same was not maintainable in view of Section 362 of the CrPC.

5. The present matter is being argued by the petitioner himself.

6. He submits that the principles of natural justice were violated as his application was dismissed on 13.02.2017 in his absence without hearing him.

7. He further submits that the cost was erroneously imposed even though Section 362 of the CrPC was not applicable as the petitioner had not filed the application seeking review of the order.

8. At the outset, it is relevant to note that the learned Revisional Court had explicitly noted that the petitioner had not appeared before the Court to address arguments on two dates despite grant of opportunity.

9. The cost of ₹5,000/- was imposed on the petitioner due to



the frivolous nature of the application wherein he had preferred an application as the case relied upon by the learned Trial Court had not been put to him. Moreover, the petitioner had also stated that the judgment relied upon was not applicable as the law had been clarified subsequently by a larger bench.

10. While the said arguments could have been pressed by the petitioner in challenge against the order dated 30.05.2016, on the face of it, the learned Revisional Court was right in observing that the application was in the nature of review which is barred under Section 362 of the CrPC.

11. On being pointedly asked about the status of the complaint, the petitioner states that the complaint filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 has already been dismissed by the learned Trial Court.

12. Evidently, the fulcrum of the relief being sought by the petitioner is against the summons issued against him in the complaint. The grievance thus on the issuance of summons does not survive after the dismissal of the complaint.

13. The present petition has thus become infructuous.

14. In view of the same, this Court does not consider it apposite to delve further into the merits of the case.

15. The petition is therefore dismissed.

AMIT MAHAJAN, J

JULY 16, 2024

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