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

+ **CRL.M.C. 162/2024 & CRL.M.A. 674/2024**

MOHIT JAIN

.....Petitioner

Through: Mr. Abhay Gupta & Ms. Medha
Pandey, Advs.

versus

ARTI SAXENA

.....Respondent

Through: Mr. Namit Suri, Ms. Purnima Singh,
& Mr. Ajun Kaushal, Advs.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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09.07.2024

CRL.M.A. 675/2024

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.M.C. 162/2024

1. This petition is filed for setting aside order dated 25th September 2023, in Complaint Case No. 4899/2020, passed by the Metropolitan Magistrate, dismissing the application under Section 311 Cr.P.C. for recall of complainant for further cross-examination.
2. This complaint had been filed under Section 138, read with 142 NI Act, on the accusation of dishonour of a cheque for Rs.70 lakhs tendered by accused to the complainant. Trial had already commenced and the cross-examination of complainant of CW-1 commenced on 1st April 2022 and concluded on 31st March 2023. Thereafter, this application under



Section 311 Cr.P.C. was moved on 22nd May 2023 for recall of complainant for her further cross-examination on the basis that regular counsel of the accused had conducted cross-examination on the first two dates; however, for some reason, that advocate resigned from the partnership of the firm and could not conclude the cross-examination.

3. Cross-examination was admittedly conducted on the last date of hearing by another counsel, in the presence of the accused, but it is stated in the application that he did not have any '*personal knowledge of the case*' and therefore certain documents were left uncontroverted.

4. On this basis, the application was moved as well as other aspects they wanted to confront in the cross-examination. In rejoinder to the said application, further ground was made on the basis that a summary suit had been filed, being CS(COMM) 179/2023, by complainant before this Court, and as per the petitioner-accused, contrary stands were taken by respondent, and thus they wanted a chance to re-examine the witness.

5. These aspects have been considered in the impugned order dated 25th September 2023, that has already considered contention of petitioner. The impugned order rightly states that a line must be drawn to the right of cross-examination, and sufficient opportunities had already been granted to accused to cross-examine the witness.

6. Counsel for petitioner, however, contends that there are elements of a composite transaction, which was averred by complainant in the suit on which he did not get a chance to cross-examine.

7. Counsel for complainant vehemently refutes the same and states that the cross-examination was duly conducted by petitioner's counsel and as regards composite transactions, questions had already been put to the witness.



8. Be that as it may, continued opportunities for cross-examination cannot be provided endlessly. It is a fact that a cheque of Rs.70 lakhs had been given by petitioner to complainant which got dishonoured. Presumption in law works against the petitioner. Even if there was any composite transaction which the complainant adverted to in the suit, petitioner would have already been aware of the same (having had transactional dealings with the complainant before the disputes started) and mere filing of the suit could not trigger a new line of questioning.

9. Accordingly, the plea for re-examination is unmerited; therefore, the petition is dismissed.

10. Pending application is disposed of as infructuous.

11. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JULY 9, 2024/sm