



\$~67

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CRL.M.C. 8704/2024 & CRL.M.A. 33297/2024, CRL.M.A.
33298/2024

VIMAL GHAI

.....Petitioner

Through: Mr. Satish Kumar, Advocate *via*
video-conferencing.

versus

STATE (NCT OF DELHI) & ANR.

.....Respondents

Through: Mr. Utkarsh, APP for the State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

07.11.2024

%

By way of the present petition filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioner impugns order dated 16.10.2024 made by the learned Principal District & Sessions Judge, South-East District, Saket Courts, New Delhi in criminal revision petition bearing CR No.317/2024, thereby setting-aside order dated 16.07.2024 made by the learned Judicial Magistrate First Class (NI Act)-04, Saket Courts, South, New Delhi ('JMFC') on an application made in Ct. Cases No.5009/2020.

2. By way of order dated 16.07.2024, the learned JMFC had partly allowed an application filed by the petitioner (accused before the learned JMFC) under section 45 of the Indian Evidence Act, 1872 read with section 311 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), permitting the petitioner to get 03 receipts examined by a private handwriting expert and had also granted to respondent No. 2



(complainant before the learned JMFC) the opportunity to cross-examine the handwriting expert.

3. Mr. Satish Kumar, learned counsel appearing for the petitioner submits, that the essence of the petitioner's case in his defence, is that he has already paid to respondent No. 2 the sum of Rs.5.60 lacs in cash towards refund of a friendly loan of Rs. 11 lacs, that he had taken from respondent No. 2, and in evidence of refund respondent No. 2 had issued receipts *vide* exhibits Ex.DW-1/1 to Ex.DW-1/3.
4. Counsel submits however, that since respondent No. 2 had flatly denied his signatures on the said receipts, the petitioner moved an application before the learned Magistrate, praying that the said receipts be examined by a government handwriting expert, which application was partly allowed by the learned Magistrate permitting the petitioner to have the 03 receipts examined by a private handwriting expert, while also granting to respondent No. 2 the opportunity to cross-examine that expert. However in the revision petition filed by respondent No. 2, the learned Sessions Court has set-aside that order.
5. A perusal of order dated 16.10.2024 passed by the learned Sessions Court shows that the revision petition filed by respondent No.2 has been allowed and order dated 16.07.2024 passed by the learned JMFC has been set-aside for the following essential reasons :

“11. On the other hand, Ld. counsel for the revisionist/complainant has argued that the application of the respondent/accused for verification of signatures of complainant was already dismissed by Ld. Trial Court vide order dated 31.10.2023 and thereafter again in revision vide order dated



02.12.2023. It is further argued that there is a great delay of around two years in filing the present application and the same has been filed just to prolong the trial, which has already consumed around 5 years. It is argued that there is no explanation for the delay and the present application has been filed at the stage of DE i.e. after conclusion of CE and statement of accused U/s 313 Cr.P.C. It is further argued that the loan of Rs. 11 lakhs was taken by respondent/accused on 03.03.2020 through cheque which got encashed on 06.03.2020 and on the same day of taking of the cheque respondent/accused has returned Rs. 2,40,000/- to the complainant despite the fact that cheque was not encashed which is hard to believe. The second payment receipt is dated 13.03.2020 of Rs.1,20,000/-, which is within 7 days of receiving the loan amount, which fact is also hard to believe as nobody takes loan for such short period. It is argued that respondent/accused is gaining more time and delaying the proceedings by filing such frivolous applications.

* * * * *

“13. In the instant case, perusal of the record reveals that respondent/accused has sought similar relief of examination of payment receipts by handwriting expert or CFSL or verification of signatures of complainant thereon before the Ld. Trial Court, which application was dismissed vide order dated 31.10.2023. Further, consequent upon dismissal of said application, respondent/accused preferred revision against the order dated 31.10.2023, which order was upheld thereby dismissing the revision petition by Revisional Court vide its order dated 02.12.2023. It is seen that after dismissal of said revision petition, **respondent/accused did not challenge the said order before the Hon'ble High Court, as such the order dated 31.10.2023 attained finality and became absolute.**”

(emphasis supplied)

6. Furthermore, insofar as the prayer under section 311 of the Cr.P.C. is concerned, the learned Sessions Court has taken the following view :



“14. Perusal of the record further reveals that after dismissal of revision petition for examination of payment receipts by handwriting expert, respondent/accused filed an application U/s 311 Cr.P.C. for further cross examination of complainant. However, the said application was dismissed by the Ld. Trial Court vide order dated 05.03.2024. Respondent/Accused preferred a revision petition challenging the order dated 05.03.2024, which was dismissed by the Revision Court vide order dated 10.05.2024.

“15. While dismissing the application for verification of signatures vide order dated 03.10.2023 [sic, 31.10.2023], Ld. Trial Court gave specific findings that there is no explanation for delay in filing the said application. The Ld. revisional Court stated in its order that accused waited for two years for the trial to conclude and thereafter filed said application for examination of signatures, which he could have done at the stage of cross examination of statement of accused.

“16. Ld. Revisional Court while dismissing the revision petition against order dated 31.10.2023 vide its order dated 02.12.2023, added to the findings of the Ld. Trial Court that perusal of receipts reveal that part payment of loan was returned 3 days prior to the date of disbursement of loan amount i.e. on 06.03.2020 and further part payment was returned, again after 7 days of its disbursement i.e. again on 13.03.2020, which itself defeats the very purpose of taking of loan on 06.03.2020.

“17. Perusal of record reveals that the three payment receipts were brought on record during examination in chief of complainant on 03.12.2022 and the same were also confronted during cross-examination of complainant. On conclusion of complainant's evidence statement of accused was recorded on 25.03.2023 wherein accused discussed regarding the repayment. Defence evidence was concluded on 01.06.2023 wherein the three receipts which were earlier marked as Mark 1, 2 & 3 were again exhibited as Ex. PW1/D1 to Ex. PW 1/D3. Thereafter, the application for verification of signatures was filed. Perusal of aforesaid dates of events and corresponding relevant record to it



reveals that various opportunities for verification of signatures of complainant on the receipts through handwriting expert or CFSL was available to the respondent/accused ever since 03.12.2022 but he failed to excerecise [sic, exercise] the same and take any steps in that regard for unknown reasons. Respondent/accused filed application for verification of signatures selectively after a great delay without giving any probable explanation that too after conclusion of cross examination of the complainant, recording of statement of accused U/s 313 Cr.P.C. and conclusion of defence evidence. It is relevant to note that alleged payment receipts have already been dealt in cross examination, statement of accused and defence evidence and DW2 Ms. Jaya Shukla is an exclusive witness from Truth Labs qua said receipts and a report Ex. DW2/1 was filed in that regard which is already a matter of record. Respondent/accused has already availed repeated opportunities to confront the complainant with his signatures on the said payment receipts which have been denied by the complainant, however, despite that he has again filed application U/s 45 of the IEA r/w Section 311 Cr.P.C. for examination of signatures on said receipts, when the matter is at the stage of final arguments. It can be seen that the matter is pending trial ever since August 2020 and it is the 5th year of its trial. Respondent/accused is well aware of the fact that same relief has already been denied to him vide order of Ld. Trial Court dated 31.10.2023 and again vide order dated 02.12.2023 by Ld. Revisional Court, which fact has been concealed by him in his application U/s 45 IEA r/w Section 311 Cr.P.C., of which adverse inference is drawn against him.

“18. It can be seen that respondent/accused time and again is trying to take advantage of its own wrongs in order to delay the matter. He cannot be permitted to take Courts for granted as per his whims and fancies. Initially, despite numerous opportunities, respondent/accused failed to examine signatures of complainant on receipts during different stages of trial and only after conclusion of DE, he has moved such application without any explanation as to why he remained silent for such a long time, shows deliberate



misconduct on his part. Secondly, despite conducting exhaustive cross examination of CW1/M.P.Sharma on 20.08.2022, 03.12.2022, 22.12.2022 and 07.03.2023 he filed application U/s 311 Cr.P.C. for further cross examination of Complainant for no good reason, which was dismissed vide order dated 05.03.2024. Again, he filed revision petition against the said order, which was also dismissed vide order dated 10.05.2024. The conduct of respondent/accused shows that he is doing all possible meritless efforts to prolong and delay the litigation and gain time. Respondent/accused is conscious of the fact that generally court consume sufficient time to decide applications and even revision would also take time for disposal, as such, with malicioius [sic, malicious] intention, he is filing applications after applications, even they are meritless.”

(emphasis supplied)

7. From a perusal of order dated 16.10.2024 of the learned Sessions Court therefore, it is clear, that by that order the learned Sessions Court has set-aside order dated 16.07.2024 passed by the learned JFMC essentially for the reason that on multiple earlier occasions the petitioner had made similar applications, seeking the same or similar relief in relation to the three receipts in question; and each time, that relief was declined. Evidently therefore, the filing of the latest application seeking that the three receipts be examined by a handwriting expert, was yet another attempt by the petitioner to seek the same relief, which only served to further delay a long-pending trial.
8. Upon a conspectus of the foregoing, this court finds nothing remiss in order dated 16.10.2024 passed by the learned Sessions Court in criminal revision petition bearing CR No.317/2024. There is



accordingly no ground to interfere in that order in exercise of this court's inherent powers under section 528 of the BNSS.

9. The petition is accordingly dismissed *in-limine*.
10. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 7, 2024

V.Rawat