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

+ CRL.M.C. 8927/2024

SANDEEP CHAWLA

.....Petitioner

Through: Mr. Santosh Chaurihaa, Advocate.

versus

CTS MANAGEMENT SERVICES PVT LTD & ANR.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **14.11.2024**

CRL.M.A. 34167/2024 (Exemption)

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

CRL.M.C. 8927/2024 & CRL.M.A. 34168/2024 (Stay)

1. This petition has been filed for setting aside the impugned order dated 26th October, 2024 passed by MM (MCD), East District, Karkardooma Courts, Delhi in CT Case No. 47244/2016. By the impugned order, an application was moved by the petitioner/accused for summoning of Official Liquidator (“**OL**”) was dismissed.
2. Petitioner has stated in the application that defence evidence has been recorded, and the case is fixed for final arguments. However, they inspected the judicial file, and they came to know that the notice to the OL had not been complied with by the OL, and he had not come forward to represent the company before the Trial Court.
3. The facts relevant to the present petition are that M/s Peacock Media



Ltd. (“*the Company*”), in which petitioner was a director, was engaged in an inter-corporate business relationship with the complainant, primarily in the advertising and facility management sectors. Due to financial difficulties and alleged liabilities arising from these business transactions, the Company went into liquidation, and its records were transferred to the Official OL.

4. According to petitioner, these records are essential to substantiate the financial arrangements between the parties, as they contain documentation relevant to the Company's inter-corporate transactions, which the petitioner argues establish liability on the part of the complainant. During trial proceedings, petitioner requested the summoning of OL to present these records; however, the Trial Court dismissed this request, noting that the Company had completed liquidation under Company Petition 188/2023 and that no further documents were available.

5. The orders that are placed on record chronologically document procedural developments in CC No. 47244/2016 and CC No. 163/15, involving CTS Management Services and Peacock Media Ltd. On 11th January 2016 in CC No. 163/15, the complainant's Authorized Representative (‘AR’) substitution was allowed, substituting Sanjay Jalla as AR. The court took cognizance of the offence under Section 138 of the Negotiable Instrument Act (“*NI Act*”), and pre-summoning evidence was tendered via affidavit. The complainant sought additional time to file Form 32 and relevant details of the petitioner/accused, as per High Court directions, leading to an adjournment until 22nd January 2016.

6. On 26th July 2016, summons were issued to Peacock Media Ltd. due to a *prima facie* case, with service *via* post and affixation as per Section 65 of the Code of Criminal Procedure, 1973 (“*Cr.P.C.*”).



7. The court issued notice to the Official Liquidator following liquidation of the accused company. However, by 08th April 2019, the OL's absence persisted, and further adjournments were granted to facilitate document review and cross-examination.

8. On 26th October 2024, the OL appeared through counsel and stated that there is nothing remaining of the company as the company was liquidated in 2014. Notwithstanding, petitioner continues to assert that the records will be necessary for that to put forward the defence.

9. However, it is noted from the order dated 26th October 2024 that this issue had been raised previously, and defence evidence, including testimony from three witnesses, was subsequently led by petitioner/accused. Trial Court observed that the present request to recall witnesses appeared to be a delay tactic, as the matter was listed for final arguments. Trial Court rejected the claim that liquidation of the company barred further proceedings against the director. The matter was adjourned to 14th November 2024 for final arguments, with no further adjournments to be granted.

10. Considering that the matter is listed for final arguments today at 2 P.M before the Trial Court, the Court is not inclined to interfere in the impugned order.

11. Counsel for the petitioner canvass that power under Section 311 of the Cr.P.C ought to be exercised to meet the ends of justice. However, the court cannot be impervious to the background facts and circumstances particularly when such an application leads to derailment of long-standing proceedings, about to achieve culmination after 9 years.

12. In **Natasha Singh v. CBI**, (2013) 5 SCC 741, the Supreme Court has held that power under Section 311 CrPC is to be exercised judicially and not



arbitrarily. It should be invoked for a just decision of the case and not to fill gaps in the prosecution or defense case. In the context of Section 138 NI Act, the Court can apply this discretion carefully to avoid unnecessary delays. Relevant paragraphs are extracted as under:

“8. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at “any stage” of “any enquiry”, or “trial”, or “any other proceedings” under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

.....

15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence,



or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as “any court”, “at any stage”, or “or any enquiry, trial or other proceedings”, “any person” and “any such person” clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.”

(emphasis added)

13. Petitioner will be at liberty to canvass their arguments in defence basis unavailability of the record, which they state is necessary for them to rebut the presumption under Section 139 NI Act.
14. The Trial Court will appreciate the matter, in that context and on the basis of evidence already on record.
15. The petition stands disposed of with these directions. Pending application (if any) also stands disposed of.



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

NOVEMBER 14, 2024/DV/tk

ANISH DAYAL, J