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

+ CRL.REV.P.(NI) 81/2024

MOHAN CHANDRA PANDEYPetitioner
Through: Mr. Harit Chhabra,
Advocate.

versus

ASHISH MITTALRespondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **16.12.2024**

CRL.M.A. 37759/2024 (Exemption)

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

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3. The present petition is filed challenging the order dated 22.11.2024 (hereafter '**impugned order**'), passed by learned Additional Sessions Judge ('**ASJ**'), North District, Rohini Court, Delhi, in CA No. 64/2023, whereby the application filed by the petitioner under Section 391 of the Code of Criminal Procedure Code, 1860 ('**CrPC**') was dismissed.
4. The learned Trial Court *vide* judgment dated 13.01.2023 and order on sentence dated 24.02.2023, in Ct Case 12186/2016, had convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**') and sentenced him to pay Rs. 1,75,000/- as compensation to the complainant, and in default, to undergo simple imprisonment for a period of one month.
5. The petitioner challenged the judgment dated 13.01.2023

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and order on sentence dated 20.02.2023 by filing an appeal under Section 374(3) of the CrPC before the learned Court of Sessions.

6. The petitioner also filed an application under Section 391 of the CrPC praying that further evidence be taken on record. It was contended in the application that the complainant could not be cross-examined during the course of trial due to negligence of erstwhile counsel.

7. The application was dismissed *vide* the impugned order, noting that the complaint was filed in the year 2016 and the notice under Section 251 of the CrPC was framed against the accused way back on 14.11.2017. It was further noted that sufficient opportunities were given to the petitioner to cross-examine the complainant which were not availed whereafter the complainant evidence was closed. The petitioner was examined under Section 313 CrPC on 31.03.2021. It was also observed that no ground for adducing additional evidence was made out.

8. There is no dispute that the petitioner was given sufficient opportunity for the purpose of cross-examination of the complainant. The petitioner had led defence evidence also. No application was filed seeking permission to cross-examination of the complainant before the learned Trial Court. It is only when the judgment of conviction and order on sentence were challenged, that the ground was taken by the petitioner that he would have been able to prove his case if he had the opportunity to cross examine the complainant.

9. Undisputedly, multiple opportunities were in fact granted to the petitioner which were not availed by the petitioner.

10. Perusal of the judgment of conviction and order on sentence reflects that the defence of the petitioner was adequately addressed. The impugned judgment on conviction was not passed



on the ground that the petitioner had not cross-examined the complainant and therefore the allegations in the complaint were taken to be admitted.

11. As rightly noted by the learned ASJ, sufficient opportunities were given to the petitioner to for the purpose of cross examination of the complainant.

12. The application under Section 391 of the CrPC also does not set out any such ground which would merit any consideration at this stage.

13. If the argument raised by the petitioner is accepted, then there would be no finality to any trial since every time party losing will contend that the erstwhile counsel had not done a proper job. As noted above, the learned Trial Court convicted the petitioner after considering the defence raised and the order was not passed on the ground that since the complainant was not cross-examined, the allegations are deemed to be accepted. No prejudice is shown by the petitioner to have been caused due to non cross-examination of complainant.

14. In view of the aforesaid discussion, this Court does not find any merit in the present petition.

15. The petition is therefore dismissed.

16. Pending application also stands disposed of.

AMIT MAHAJAN, J

DECEMBER 16, 2024

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