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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 324/2017, CRL.M.A. 1418/2017, CRL.M.A. 11103/2024**
& CRL.M.A. 11104/2024

TARUN GAUTAM

.....Petitioner

Through: Mr T. P. S. Kang, Mr Sameer
Kaushik and Ms Mehak Gupta,
Advocates.

versus

PUNEET KUMAR AGGARWAL

.....Respondent

Through: Ms Rashi Agrawal and Ms Neha
Kapoor, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

29.08.2024

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1. This petition has been filed assailing the order dated 30th September, 2016 passed by MM and dismissing the application filed under Section 311 of Cr.P.C. for recall of the complainant for cross-examination.
2. The complaint under section 138 of the Negotiable Instruments Act had been filed in the year 2009 and was later re-numbered as 468116/2016.
3. Petitioner was served in 2009, however, due to non-appearance, NBWs had to be issued. Subsequently, it transpires that exemption from personal appearance was sought by the petitioner from time to time.
4. The cross-examination of the complainant was completed on 13th February 2013. Subsequently, he then led his defence evidence and took 16 opportunities viz. 22.12.2011, 21.05.2012, 13.02.2013, 02.03.2013,



16.04.2015, 03.07.2015, 28.09.2015, 30.10.2015, 01.04.2016, 01.06.2016, 10.06.2016, 15.07.2016, 17.08.2016, 09.09.2016, 30.09.2016, and 28.11.2016 including 4 last and final opportunities i.e. 10.06.2016, 15.07.2016, 30.09.2016.

5. Subsequently, after leading his defence evidence, the application was moved on 30th September 2016, which has been disposed of by the impugned order. It has been rightly noted in the impugned order that Section 311 Cr.P.C., right is not to be used as a matter of routine and it has to be only invoked when the exigencies of justice require so.

6. The essential contention of the counsel for the petitioner is that during defence evidence certain things came on record and they need to cross-examine the complainant yet again.

7. On this, also it has been rightly noted by the Trial Court that right under Section 311 Cr.P.C. cannot be used as a right for re-trial.

8. In this regard, reference may also be made to the decision of the Supreme Court in ***Ratanlal v. Prahlad Jat.***, (2017) 9 SSC 340 and ***Satbir Singh v. State of Haryana***, (2023) SCC online SC 1086. where it is stated that power to recall a witness has to be exercised for strong and valid reasons with caution and circumspection and not as a matter of course.

9. Counsel for the petitioner states that they should be allowed to cross-examine to rebut the presumption against them under Section 139 Negotiable Instruments Act.

10. In the opinion of the Court, this is not a reason for re-looping the whole trial proceeding. The rebuttal of the presumption will be assessed on the facts which have come on record, as well as through the testimonies, at the stage of



arguments.

11. The petition is therefore dismissed. Pending applications (if any) are disposed of as infructuous.

12. It is noted that the matters were held up for final arguments before the Trial court considering the long pendency of this matter before this Court, and the Trial Court has not been able to proceed ahead. It is directed that the Trial Court shall expeditiously dispose of the matter within a period of three months.

13. ‘*Dasti*’

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

ANISH DAYAL, J

AUGUST 29, 2024/RK

Click here to check corrigendum, if any