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

+ **CRL.M.C. 685/2025**

DR. PRASHANT SARIN

.....Petitioner

Through: Mr. Priyank Kher, Mr. Vivek Kumar
and Mr. Gantavya Gulati, Advocates

versus

PUSHPA DEVI

.....Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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03.02.2025

1. The present petition has been filed under Article 226 of the Constitution of India, read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'), erstwhile Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C) impugning the Order dated 04.01.2025 passed by the learned JMFC (NI ACT) Digital Court-01, Patiala House Court, Delhi in Criminal Complaint No. CC NI ACT 5720/2021 titled as Pushpa Devi v. Dr. Prashant Sarin ('Impugned Order').
2. The Petitioner is the accused in the complaint and the Respondent herein is the complainant before the Trial Court.
3. Vide Impugned Order dated 04.01.2025 learned Trial Court has dismissed the application filed by the Petitioner herein, under Section 91 Cr.P.C for summoning of Income Tax Returns (ITRs) of the Respondent, details of all the Bank accounts of the Respondent as well as the property deal documents of the Respondent.



4. Learned counsel for the Petitioner submits that the aforementioned criminal complaint has been filed by the Respondent herein under Section 138 of the Negotiable Instruments Act, 1881 against the dishonouring of a cheque bearing no. 436852 dated 09.09.2021 drawn on Punjab National Bank, Gulmohar Enclave, Green Park, New Delhi for a sum of Rs. 50,00,000/-.

5. He fairly admits that the said cheque was drawn by the Petitioner herein in discharge of a debt owed by the Petitioner towards a loan advanced by the Respondent. He however, contends that the amount of loan due to the Respondent has been already been repaid by the Petitioner through Cash and/or Digital Banking channels and therefore, the Petitioner does not owe any dues towards the Respondent against which the Respondent could have presented the said cheque for encashment.

6. He states that during the cross-examination of the Respondent discrepancies surfaced in the Respondents testimony and therefore, the Petitioner filed the application under Section 91 Cr.P.C which has been dismissed by the Impugned Order.

7. He states that the documents which the Petitioner seeks to summon are relevant for the proper disposal of the criminal complaint as they substantiate the Petitioner's claim of repayment, exposes the inconsistencies in the Respondent's allegations and traces the flow of funds.

8. This Court has heard the submissions advanced by the learned counsel for the petitioner and perused the martial placed on record.

9. The learned Trial Court in the impugned order has held that all the relevant questions pertaining to the underlying transaction and the documents have already been put to the Respondent/complainant during her



cross-examination and the documents which the Petitioner seeks production of, at this stage are neither necessary nor desirable for the purpose of trial.

10. The Supreme Court in the case of **Asstt. Collector of Customs v. L.R. Melwani**¹, has opined that the whether a particular document should be summoned or not is essentially in the discretion of the Trial Court. Except for very good reasons, High Court should not interfere with that discretion. The relevant extract of the said judgement reads as under: -

“14. That apart we do not think that the High Court was justified in interfering with the discretion of the learned Magistrate. **Whether a particular document should be summoned or not is essentially in the discretion of the trial court.** In the instant case the Special Public Prosecutor had assured the learned trial Magistrate that he would keep in readiness the statements of witnesses recorded by the Customs Authorities and shall make available to the defence Counsel the statement of the concerned witness as and when he is examined. In view of that assurance, the learned Magistrate observed in his order:

“The recording of the prosecution evidence is yet commence in this case and at present there are no materials before me to decide whether or not the production of any of the statements and documents named by the accused in his application is desirable or necessary for the purpose of the enquiry or trial. As stated at the outset, the learned Special Prosecutor has given an undertaking that he would produce all the relevant statements and documents at the proper time in the course of the hearing of the case. The request made for the issue of the summons under Section 94, Criminal Procedure Code is also omnibus.”

The reasons given by the learned Magistrate in support of his order are good reasons. The High Court has not come to the conclusion that the documents in question, if not produced in court are likely to be destroyed or tampered with or the same are not likely to be made available when required. It has proceeded on the erroneous basis that the accused will not have a fair trial unless they are supplied with the copies of those statements even before the enquiry commences. **Except for very good reasons, the High Court should not interfere with the discretion conferred on the trial courts in the matter of summoning**

¹ 1968 SCC OnLine SC 161



documents. Such interferences would unnecessarily impede the progress of cases and result in waste of public money and time as has happened in this case.”

(Emphasis Supplied)

11. It is a settled law that for passing of an order under Section 91 Cr.P.C the factors which Trial Court is required to consider are whether the production of the said documents concerned is desirable and necessary for the purposes of the trial. In the facts of the present case the Impugned Order records that the Respondent has already stated in her cross-examination that she has not disclosed the fact of advancement of loan to the Petitioner herein in her ITRs. Therefore, the production of the Respondent's ITRs is not necessary.

12. In fact, during arguments before this Court, learned counsel for the Petitioner states that the Petitioner has disclosed receipt of the loan from the Respondent in his ITRs but has not shown the alleged subsequent repayment of the loan.

13. In the aforesaid facts, the impugned order declining to issue directions to the Respondent to produce her ITRs does not suffer from any error.

14. The Petitioner states that the details of the bank accounts of the Respondent should be summoned as the scrutiny of the bank statements will reflect cash deposits and bank transfers from Petitioner to the Respondent towards repayment. He states that Petitioner had withdrawn cash from his bank accounts to make payments to the Respondent.

15. In the opinion of this Court, the said reason given by the Petitioner for summoning the Respondent's bank account details is without any basis. The Petitioner admittedly has not stepped into the witness box as yet to lead



defence evidence. At appropriate stage, the Petitioner will be at liberty to produce his bank statements evidencing the bank transfers to the Respondent and cash withdrawals alleged to have been made by the Petitioner for making repayment to the Respondent. The Petitioner has failed to explain that on what basis he can compel the Respondent to produce her bank details without first leading evidence that he in fact made repayments to the Respondent.

16. Thus, the impugned order declining to issue directions to Respondent to produce her bank account details does not suffer from any error.

17. With respect to the summoning of the property documents of Respondent, the Petitioner has failed to offer any reasonable basis for summoning the said documents. The Respondent in her cross-examination has stated that she advanced funds to the Petitioner after selling one of her immovable properties. The Petitioner does not dispute receipt of funds from the Respondent and thus the debt stands admitted. In view of the said admission of the Petitioner, there is no reasonable basis for summoning of the property documents.

18. Thus, similarly the impugned order declining to issue directions to the Respondent to produce the property documents does not suffer from any error.

19. In the considered opinion of this Court, the Petitioner has failed to make out the case for exercising exceptional powers conferred to this Court under Section 528 of BNSS.

20. Accordingly, the captioned petition is dismissed along with all pending applications.



21. Needless to state that observations made in this order shall not bind the parties at the final hearing of the complaint, which shall be decided by the Trial Court on the basis of the evidence.

MANMEET PRITAM SINGH ARORA, J
FEBRUARY 3, 2025/mt/AKT
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