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

\+ CRL.M.C. 8308/2023 & CRL.M.A. 30915/2023

PRAKASH DUA .....Petitioner

Through: Mr. Divyendu Sorayan, Advocate (through VC).

versus

VINOD KUMAR GULATI .....Respondent

Through: Mr. Rahul Rajpal, Advocate (through VC).

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

O R D E R

% **10.03.2025**

1. This hearing has been done through hybrid mode.

2. The present petition under Section 482 of the CrPC has been filed seeking the following prayers: -

> "a) set aside/quash the order dated 31.10.2023 passed by Shri Shivaji Anand, Ld. Addl. Session Judge(SFTC), Dwarka Courts dismissing Criminal Revision Petition of the Petitioner bearing no. CR. No. 665/2023 filed against the order passed by Sh. Gaurav Goyal, Ld. MM, NI Act, Dwarka Court, New Delhi;
> b) Call for the record of the case and stay the proceedings of the trial court which is fixed for 09.11.2023 by the court of Sh. Gaurav Goyal, Ld. MM, NI Act, Dwarka Court, New Delhi, Ct. Case no: 6552/2022 titled as Prakash Dua Vs. Vinod Kumar Gulati till the disposal of the present petition;
> c) pass any other order or orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in favour of the petitioner."

3. Petitioner in the present case is the proprietor of M/s Classic Batteries & Inverter and is in the business of selling inverters and batteries. Respondent herein had filed a complaint being CC NI Act 6552/2022, under Section 138

of the Negotiable Instruments Act, 1881 (for short, 'NI Act'), against the petitioner and his proprietorship firm arraying them as accused Nos. 1 and 2 respectively. During the course of the trial at the stage of the final arguments, petitioner herein filed an application under Section 311 of the CrPC seeking recalling the complainant/respondent for his examination and the same was dismissed by the learned Metropolitan Magistrate *vide* order dated 19.10.2023. Aggrieved from the said order, petitioner filed a revision petition being CR No. 665/2023 before the learned Additional Sessions Judge which was also dismissed *vide* order dated 31.10.2023. Hence, the present petition has been filed seeking the aforesaid reliefs.

4. Learned counsel for the petitioner has submitted that the application under Section 311 of the CrPC was filed on behalf of the latter so as to examine the respondent/complainant in respect of certain entries, GST claims which were not put to him by earlier counsel engaged by the petitioner. It is further the case of the petitioner that such examination would be vital in order to elucidate the fact whether the subject cheques were issued in discharge of any legally enforceable debt or not as the respondent/complainant had not filed any income tax return along with the complaint which could show the said liability.

5. *Per contra*, learned counsel for the respondent/complainant had submitted that the petitioner had ample opportunities to cross-examine the respondent in this regard on earlier occasions, however, the same were not availed by him and the present application has been filed at a belated stage and the same is liable to be dismissed. It is further submitted that the petitioner by way of the present application is trying to fill in the lacunae in his defence.

6. Heard learned counsel for the parties and perused the record.

7. In the application preferred by the petitioner under Section 311 of the CrPC the following averments were made: -

> "4. The after going through the available evidence it was found that no cross examination was conducted with regard to false and manipulated statement of account annexed by the complainant at page no. 22 of the complaint and the receipt vouchers filed along with it from page no. 23 to 27.
> 5. The applicant submits that the stand of the complainant in the complaint that the subject cheque was issued on 10.12.2021 by the accused in discharge of liability shown in the statement of account annexed at page no. 22. The applicant has found some credible evidence to show that no cheque was ever issued on 10.12.2021 from the cheque book of the account drawn on South f Indian Bank by the accused.
> 6. That the complainant in his cross examination done by the previous counsel on 25.05.2023 stated that.-
> <u>"our sales executive used to go to the shop of the accused to take the orders. After the goods were supplied the same executive used tocollect the money. The amount receipt was also sent with the executive. He used to collect money."</u>
> 7. That however the previous counsel has not cross examined the witness with regard to many aspects of the so called sales executive and also with regard to the statement of account, receipts and mode of collecting payment/receipts from the accused etc.
> 8. That in order to keep the defence undisclosed in the application that would enable the witness to come prepared for the cross examination, the details are not mentioned in the application. In view of above applicant requests for recalling CW-1 for cross examination, which is imperatively required to elicit the truth or otherwise the accused will be seriously prejudiced on account of false accusation of the complainant made before it."

8. Petitioner has placed on record a certified copy of the cross-examination of the complainant/respondent, who was examined as CW-1, recorded on 25.05.2023, which reads thus: -

> "It is correct that I have sent legal notice in the name of Mis City Electronics while I have filed a case in my name as Vinod Kumar Gulati. (Vol. Mis City Electronics Firm is a proprietorship firm and I

am the proprietor of the firm.) It is correct that I have not filed any document to show that I am the proprietor of Mis City Electronics. It is wrong to suggest that I am not the proprietor of Mis City Electronics and I have filed a false case. It is correct that cheque in question is also in the name of City Electronics. It is correct that no purchase order by the accused has been filed along with the complainant. (Vol. The order was placed telephonically. Our sales executive used to go to the shop of the accused to take the orders. After the goods were supplied the same executive used to collect the money. The amount receipt was also sent with the executive. He used to collect money. Whatever money was collected by him, the receipt was signed and stamped by the accused.)

It is correct that I have not filed any bill which I am claiming. (Vol. I had sent statement to the accused through registered AD on 16.11.2021. Time was also given to the accused to check whether there is any mistake in the statement. After that the accused issued the cheque in question to me.) The statement was sent through speed-post. It is correct that courier tracking report showing that signature of Mr. Paramjeet Singh in the lieu of accused. It is wrong to suggest that the statement was sent by me never received by the accused. The cheque in question was given to me by accused at his shop. I do not remember the exact the date when the cheque was handed over to me. But the same was given to me one or two days before the date on the cheque in question.

Q. With whom had you went to the shop of the accused to collect the cheque? Ans. I had gone alone.

It is correct that I have not shown earlier in my complaint as well as in my affidavit that I have received the cheque from the accused at his shop. It is wrong to suggest that I did not go to the shop of the accused and the accused never handed over the cheque in question to me that is why I am not remembering the exact date when the cheque was handed over. (Vol. I regularly visit the shop of all the customers and I handle all day to day concerns myself including receiving of payments.)

It is wrong to suggest that no bill was attached along with the complaint as fraudulent bill is difficult to make because ofGST. (Vol. I did not attach the copy of the bills along with the complaint as the bills were mentioned in the statement of the account.) It is correct that account statement filed by me which bears no bill break-up to show the GST. (Vol. The statement of account did not contain the GST bill break-up as the statement of account only shows the balance amount

> pending against the party. And the accused at that point of time was not having GST number.)
>
> It is wrong to suggest that I have filed wrong and manipulated statement. It is correct that I have not filed e-way bill regarding the supply of goods. (Vol. There is no requirement of e-way bill in interstate GST when the amount is below Rs. 1,00,000/-.)
>
> It is wrong to suggest that no bills have been attached with the complaint as no amount is due against the accused and the accused does not owe any legally enforcible debt to me. While I have filed the receipt of payment paid by accused with the signed and stamped by both the parties. It is wrong to suggest that no bill has been attached because nothing is due to me. (Vol. I do have all the bills against the accused and the same have been mentioned in the statement attached with the complainant.)"

9. Perusal of the cross-examination of the complainant/CW-1 reflects that the complainant/respondent was extensively cross-examined by the counsel appearing on behalf of the petitioner with respect to the statement of accounts and receipts. It further shows that the petitioner had cross-examined the complainant/respondent with respect to non filing of GST bill and which has been responded to by the complainant. In the said application, as pointed out hereinabove, the petitioner had merely made a bald averment that he has some material to show that no cheque was ever issued on 10.12.2021 from the cheque book of the account maintained with the South Indian Bank by the petitioner/accused without demonstrating any material.

10. In the considered opinion of this Court, the petitioner had cross-examined the complainant/respondent comprehensively, and therefore, no justifiable grounds have been shown by the petitioner for recalling of the complainant/respondent for further cross-examination. A witness cannot be recalled for re-examination under Section 311 of the CrPC on the ground that freshly appointed counsel is of the opinion that some more questions should

have been put to the witness. It is also a matter of record that the said application has been filed by the petitioner on 13.10.2023 at the stage of final arguments.

11. Thus, in view of the aforesaid facts and circumstances of the case, this Court finds no grounds to interfere with the orders passed by the learned ASJ as well as the learned Metropolitan Magistrate.

12. The present petition is dismissed and disposed of accordingly along with all pending applications, if any.

13. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

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

AMIT SHARMA, J

MARCH 10, 2025/*bsr/ns*

Click here to check corrigendum, if any