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

\+ CRL.M.C. 5169/2025, CRL.M.A. 22345/2025, CRL.M.A. 22346/2025 & CRL.M.A. 22347/2025

VAISHALI PUBLICITY PVT LTD & ANR. .....Petitioners
Through: Mr. Anjaneya Mishra, Mr. Sahil Yadav and Mr. Nidish Gupta, Advs.

versus

STATE OF NCT OF DELHI & ANR. .....Respondents
Through: Ms. Shubhi Gupta, APP for State.

CORAM:
HON'BLE MR. JUSTICE ARUN MONGA

<u>O R D E R</u>

% **01.08.2025**

1. The instant petition has been preferred by the petitioner seeking setting aside of order dated 21.04.2025 passed by learned Judicial Magistrate, First Class (NI) Act-01, South, Saket Courts, New Delhi.

2. Briefly stating the facts are that Respondent No.2 is a reputed publisher of magazines titled "ELLE" and "ELLE DÉCOR" and was approached by Petitioner No.2 and Mrs. Premlata on behalf of Petitioner No.1 for publishing advertisements on behalf of their client, Kanu Kitchen Kulture Pvt. Ltd., from December 2018 to September 2019.

2.1. It is alleged that the said advertisements were duly published and invoices were raised for the same. In part discharge of the alleged liability, Petitioner No.1 is stated to have issued two cheques bearing No. 282679 dated 18.09.2019 for Rs.1,50,675/- and No. 282681 dated 25.09.2019 for Rs.98,175/-, both drawn on J&K Bank. The said cheques were allegedly dishonoured upon presentation with the remarks "*Funds Insufficient*".

2.2. Aggrieved by the non payment of the amount, the petitioner filed the complaint under Section 138, 141 & 142 of N.I. Act. Subsequently, cognizance was taken on 12.03.2021 and the Petitioners were summoned. Petitioner No. 2 allegedly denied the signatures on the cheques both in the notice framed under Section 251 Cr.P.C. and during his Examination-in-Chief dated 16.07.2024. Subsequently, Respondent No.2 filed an application under Section 311 Cr.P.C. seeking summoning of a bank official to verify the signatures, which was opposed by the Petitioners on the ground that no such denial had come during cross-examination. However, the Ld. Trial Court allowed the said application vide order dated 21.04.2025.

3. Learned counsels for the Petitioners would contend that the Ld. Trial Court, while passing the impugned order dated 21.04.2025, failed to consider the objections raised by the Petitioners in their reply to the application under Section 311 CrPC and thereby violated the principles of *audi alteram partem*. The Respondent No.2 approached the Court with unclean hands and made false submissions in the said application, claiming that the Petitioner No.2 denied his signatures during cross-examination, whereas no such question was put on 16.07.2024. The application was thus based on a false and frivolous ground, going to the root of the matter. The Ld. Trial Court neither considered the contents of the application nor the Petitioners' reply and wrongly allowed the Respondent No.2 to fill lacuna in it's case, contrary to the settled proposition of law.

4. I have heard the learned counsel for the petitioner and perused the case file.

5. At the very outset, for ready reference, impugned order of learned Trial Court is reproduced as under:

"Matter is pending for orders on application u/s 311 Cr.P.C moved on behalf of the complainant requesting for calling of the witness from the bank of the accused from where the cheque in question was issued for proving the signatures of the accused on the cheque in question.

Arguments already heard. Record perused.

Admittedly as per the record, the accused A2 (Neeraj Kumar) has disputed the signatures on the cheque in question not only at the stage of framing of notice u/s 251 Cr.P.C. but throughout the trial. As such it was incumbent on the complainant to prove the signatures of the accused on the cheques in question in order to raise the presumption u/s 139 NI Act in favor of the complainant. However, the complainant has failed to prove the said fact during the course of the trial and it was only at the stage of the final arguments, the said mistake was sought to be rectified by the Ld. Counsel for the complainant by way of present application.

Needless to say that the fact sought to be proved by the complainant by way of the present application is critical and relevant for the case of the complainant. At the same time, the said fact also gains importance for the accused as one of the defence taken by the accused in the present case is that the cheque in question does not bear his signature.

Accordingly, this court is of the humble opinion that allowing the opportunity to the complainant to prove the signatures on the cheque in question with only further the cause of justice and will act as and aid in deciding the matter fairly. However, this Court can also not overlook the fact that the present application has been moved at a relatively belated stage by the complainant and as such will lead to a considerable delay in trial.

However, this Court is of the opinion that the delay that will be occasioned if the present application is allowed can be compensated by way of cost to be paid by the complainant to the accused.

Accordingly, keeping in mind the purpose of section 311 Cr.PC and the facts and circumstances as afore highlighted, application moved on behalf of the complainant stands allowed subject to payment of cost of Rs.5000/- to the accused on the NDOH. It is further clarified that non payment of cost shall result in closing the opportunity to examine the bank witness.

In view of the above, application stands allowed and disposed off accordingly.

Let summons be issued for branch manager J&K Bank, B-161, Lok Vihar, Pritam Pura, Delhi alongwith the copy of this order and the cheque in question with directions to appear on the NDOH alongwith the account opening form and signatory details of the account in question on filing of PF.

Be listed for 19.05.2025 at 2.30 pm."

6. I have perused the aforesaid order and am in agreement with the reasons assigned in the impugned order passed by the learned Judicial Magistrate. Since the signatures on the cheque are disputed by the accused, the complainant is well justified in seeking to prove the same in accordance with law. The Bank official is a material witness and his testimony seems essential to the just decision of the case. Under Section 311 of Cr.P.C (Section 348 BNSS, 2023) the court can summon any such person if his evidence appears to it to be essential to the just decision of the case. There is no illegality or material irregularity in the impugned order warranting inference of this Court.

7. The petition is dismissed. Pending application(s), if any, are also disposed of.

ARUN MONGA, J

AUGUST 1, 2025/*akc*