(2012) 02 DEL CK 0369

Delhi High Court

Case No: Criminal M.C. No. 672 of 2012

Sandeep Chaudhary		APPELLANT
	Vs	
Col. R.P. Mendiratta		RESPONDENT

Date of Decision: Feb. 24, 2012

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 311, 313, 397(3), 482
- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: V.K. Shali, J

Bench: Single Bench

Advocate: Ruchir Batra, for the Appellant;

Final Decision: Dismissed

Judgement

V.K. Shali, J.

This is a petition u/s 482 Cr.P.C. read with article 227 of the Constitution of India for setting aside the order dated 09.01.2012 passed in Crl. Rev. P. No. 86/2011 by Sh. S. K. Sarvaria, the learned District & Additional Sessions Judge, North West District, Rohini Courts, Delhi dismissing the revision petition of the petitioner against the order dated 23.09.2011 passed by the learned Metropolitan Magistrate by virtue of which the application of the petitioner u/s 311 Cr.P.C. for calling defence witness Sharad Mehta was disallowed. Briefly stated the facts of the case are that the petitioner is facing trial for an offence u/s 138 of the Negotiable Instruments Act for having issued three different cheques aggregating to an amount of Rs. 13,50,000/-. The petitioner/accused had filed an application u/s 311 Cr.P.C. for summoning Sharad Mehta, a US citizen and brother-in-law of the respondent herein, as a witness in the Court. This application of the petitioner was allowed and Sharad Mehta was summoned as a witness. On 04.01.2011, Sharad Mehta was in India, but the date on which he was to be examined, the learned Presiding Officer was not available. The petitioner had not taken requisite steps for summoning the said

witness by depositing the money. It has been noted in the order dated 23.09.2011 that Sharad Mehta went back to USA as he could not stay for long in India. The matter had been pending in the Courts below for 31/2 years and it was also noted by the learned Trial Court that the petitioner had not been completing his defence evidence for the said period. On 04.04.2011, the petitioner was directed specifically to take steps within a period of one week to get the summons issued to the witness. Despite this, no steps were taken and it seems that the petitioner was indulging in dilatory tactics. This fact was noted by the learned Magistrate whereupon he closed the opportunity to lead defence evidence of the petitioner and fixed the case for final arguments on 13.10.2011.

2. The petitioner feeling aggrieved by the said order preferred a revision petition bearing no. 86/2011, which came to be decided by the learned Additional Sessions Judge vide order dated 09.01.2012. The learned Additional Sessions Judge had also noted the concern of the learned Trial Judge that the petitioner himself was responsible for indulging in dilatory tactics by not concluding the defence evidence. The exact language used by the learned Additional Sessions Judge is reproduced herein under:

1. This revision petition is directed against the order dated 23/09/11 passed by the Ld. Metropolitan Magistrate by which the application moved u/s 311 Cr.P.C. of the petitioner/accused for calling witness Sh. Sharad Mehta for his statement in defence of the petitioner was declined by the Ld. Metropolitan Magistrate.

2. The contention of Ld. Counsel for petitioner/accused is that said Sh. Sharad Mehta is brother-in-law of the complainant and his statement is essential in the defence of the accused and the petitioner/accused wants to disprove the case of the complainant that he received the amount in question from Sh. Sharad Mehta and the petitioner/accused is ready to bear his travelling expenses by air so the impugned order may be set aside.

3. On behalf of the respondent it is argued that respondent/complainant is a Senior Citizen. The statement of the petitioner/accused was recorded u/s 313 Cr.P.C. on 04/01/08 and more than four times thereafter last opportunity was granted for Defence Evidence but it was not concluded by the petitioner. On 04/01/11 Sh. Sharad Mehta came to the Court from USA but the Ld. Presiding Officer had gone to TIP proceedings as he had to return on the same night, he had to leave the Court. The opportunity given on 04/04/11 to summon this witness was not availed of due to steps not taken within stipulated seven days so Ld. Trial Court has rightly closed the evidence of petitioner/accused.

4. I have carefully heard the respective arguments. In this case, number of opportunities were given to the petitioner/accused for conclusion of the defence evidence and right from 2009, the same witness Sh. Sharad Mehta is asked to be called. This witness has appeared on 04/01/08 and has no personal stake in this

case. He came from USA by spending handsome amount by journey by air which amount, undisputedly, was not reimbursed to him. Therefore, extra efforts should have been made by the petitioner/accused by moving application before Ld. CMM/ACMM for assignment of the case to any other Court for recording statement of the witness Sh. Sharad Mehta which was not done.

5. The latches, omissions and inaction on the part of the petitioner/accused is also reflected in the proceedings that on 04/04/11, he was granted one more opportunity to summon this witness Sh. Sharad Mehta by taking steps within 7 days but these were not taken within 7 days and instead on 29/08/11, application was moved for depositing of diet money and travelling expenses which was dismissed by the Ld. Trial Court due to inordinate delay in taking steps for summoning the witness, as despite the time span of 51/2 months given on 04/04/11 for the next date the steps were taken 51/2 months later from 04/04/11. Therefore, I do not find any impropriety, illegality or material irregularity in the order passed by the Ld. MM. The Court should not come to the rescue of a negligent party in procedural matter particularly when the question of a witness living at such a far distance in USA is also involved and more particularly when the matter is fixed in defence evidence of the petitioner/accused for above 31/2 years since 22/02/08 till the evidence of petitioner/accused was closed on 29/08/11. Therefore, more than sufficient opportunities have already been availed by the petitioner/accused to lead evidence and there is no defect in the order dated 23.09.2011 passed by the Ld. Trial Court.

6. In view of the above, the revision petition is dismissed. Trial Court Record be sent back along with copy of this order. The order in revision be sent to the server (www.delhidistrictcourts.nic.in). Parties are directed to appear before the Ld. Trial Court on 18/01/12. The revision file be consigned to Record-Room.

Sd\\-

S. K. Sarvaria

District Judge & Addl. Sessions Judge,

In

charge North-West Dstrict/Addl.Rent

Controller

Tribunal, Rohini Courts.

Accordingly, the revision petition had been dismissed.

3. Feeling aggrieved by these two orders, the petitioner has now preferred the present petition.

4. Section 397 (3) Cr.P.C. clearly lays down that a person who has once preferred a revision petition under this Section in this Court cannot prefer a second revision

petition. No doubt, Section 482 Cr.P.C. starts with a non-obstante clause and an exercise of revisionary powers by a party cannot be treated as a fetter for exercise of the powers to stop the abuse of processes of law and or to pass any order which is warranted in the interest of justice, but then the facts of the case should be of such a nature which can merit the interference of the High Court.

5. In the instant case, the petitioner has not been able to, prima facie, show that there is any abuse of processes of law in the two orders which have been passed by the Courts below nor has he been able to show that the interest of justice requires passing of an order in his favour for summoning Sharad Mehta. Sharad Mehta is, admittedly, in USA and he had come to India once, only for the purpose of testifying before the Court, which opportunity seems to have been deliberately not availed by the present petitioner and for the obvious reasons he seems to be carrying the notion that by delaying the examination of the witnesses, he will be able to gain more time and prolong the final disposal of the case. It is evident that it is these dilatory tactics which have been followed by the petitioner which have been cut short by the learned Magistrate by closing his defence evidence and fixing up the case for final arguments.

6. Obviously, in case the witness was residing in India the Court could have recalled that witness for the purpose of examination by the petitioner. But the witness is residing and working in America, which is a distant place. Summoning of the said witness will not only put the witness to inconvenience but also it will take considerable length of time thereby for him to come to India for deposition and this would cause inordinate delay. I do not find any justification for interfering in the matter. Accordingly, the petition is without any merit and the same is dismissed.