

(2016) 09 DEL CK 0082

DELHI HIGH COURT

Case No: Crl. M.C. No. 2388 of 2016 and Crl. M.A. Nos. 10187-10188 of 2016

Kanta Jindal

APPELLANT

Vs

Rasik Gupta

RESPONDENT

Date of Decision: Sept. 5, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 311
- Negotiable Instruments Act, 1881 (NI) - Section 138, Section 145(2)

Citation: (2016) 4 JCC 224 : (2017) 2 RCRCivil 456 : (2017) 1 RCRCriminal 685

Hon'ble Judges: P.S. Teji, J.

Bench: Single Bench

Advocate: Nemo, for the Respondent; R.K. Gupta, Advocate, for the Petitioner

Final Decision: Dismissed

Judgement

P.S. Teji, J. - The present petition has been filed under Section 482 of the Code of Criminal Procedure for summoning the record/judicial file pertaining to the case from the Trial Court and setting aside the order dated 12th February, 2016 passed by the learned Additional Sessions Judge, Delhi in Criminal Revision No.37/2015 as well as the order dated 23rd June, 2015 passed by the learned Metropolitan Magistrate in C.C. No.599/2001 pertaining to the case registered under Section 138 of the Negotiable Instruments Act.

2. The facts giving rise to the present petition are within the narrow compass. The respondent prosecuted the petitioner for an offence punishable under Section 138 of the Negotiable Instruments Act, on the ground that the petitioner in discharge of legal liability, issued a cheque being cheque No.086102 dated 15th February, 2008 for a sum of Rs. 50,000/- and the said cheque got dishonoured on its presentation and that the respondent failed to make payment of an amount equivalent to the value of cheque within the stipulated period prescribed under the law despite a legal notice dated 19th march, 2009.

3. After being served with the notice under Section 251 Cr.P.C. upon the respondent, the matter was listed for post summoning evidence of respondent/complainant.
4. Aggrieved by the order dated 23rd June, 2015 whereby the application of the petitioner filed under Section 311 of the Code of Criminal Procedure was dismissed, a revision being CrI. Revision Petition No.37/2015 was filed which was heard by the Court of Session and by a speaking order dated 12th February, 2016, the same was dismissed.
5. Thereafter, the present petition has been filed. The submission made by learned counsel for the petitioner is that he had moved an application under Section 311 of the Code of Criminal Procedure, for recalling the complainant for reexamination.
6. I have heard learned counsel for the petitioner and perused the available records. Perusal of the file shows that Complaint Case No.599/2001 was filed on 28th April, 2009 and since then it is pending and thereafter, notice on the same was issued on 30th May, 2009. Thereafter, the proceedings continued to go on; the prosecution evidence proceeded and ultimately the evidence of prosecution was closed on 24th November, 2011. Liberty was given to the accused to move an application under Section 145(2) of the Negotiable Instruments Act and since then three dates had been elapsed. Since the accused did not move any such application, right of the accused to cross-examination was struck off.
7. It is alleged by learned counsel for the petitioner that Court of learned Metropolitan Magistrate, without taking into consideration the order dated 29th July, 2016 passed by its predecessor Court, passed an order dated 9th November, 2010 which amounted to review and that further successor Court passed an order dated 24th November, 2011 without applying its judicial mind, thereby striking off the rights of the accused for cross-examination.
8. It is submitted that due to improper guidance by the previous counsel of the petitioner, the petitioner did not file an application under Section 145(2) of the Cr.P.C. for cross-examination of the respondent/complainant.
9. It is further stated that on 26th May, 2015, the petitioner filed an application under Section 311 Cr. P.C. which was dismissed on 23rd June, 2015 with the observation that the accused got examination of only two witnesses in defence and that despite granted last opportunity to the accused to lead defence evidence that too subject to costs of Rs. 1,000/-, the accused did not opt to lead defence evidence and even did not pay the costs. It was further observed that despite grant of three opportunities to the accused to lead defence evidence, the situation remained the same.
10. I have heard learned counsel for the petitioner at length and gone through the available records.

11. It is a settled law that the parties to the complaint have a right to be fairly and adequately represented in a criminal trial. Every accused has a right to meet the case of the prosecution on even terms. It is also the duty of the Court to ensure that the principles of natural justice are not violated and an accused is afforded with a reasonable opportunity to represent his case. Fair trial is the main object of criminal procedure and it is the duty of the Court to ensure that such fairness is not hampered with or threatened in any manner. Coming to the facts of the present case, this Court observes that on an application preferred under Section 311 of Cr.P.C. for the cross-examination of complainant, the petitioner was granted adequate opportunities to lead defence evidence subject to payment of costs and thereafter, three opportunities were granted to the accused to lead defence evidence but the same was not done.

12. It is therefore clear that in the facts and circumstances of the present case, the petitioner is adopting delaying tactics on one pretext or the other, which he cannot be allowed to do so. The petitioner is thus trying to prolong the trial of the case.

13. The learned Magistrate has delivered a reasoned order for the denial of the claim of the accused/petitioner. Similar reasoned order has also been passed by the revisional Court i.e. Court of Sessions. This Court is not of any different view than the one taken by learned Metropolitan Magistrate as well as by the Court of Sessions. So the view of the Court of Sessions as well as by the Court of learned Metropolitan Magistrate is upheld by this Court also.

14. In view of the aforesaid discussions and settled legal principles, in the considered opinion of this Court, there no illegality or infirmity in the orders dated 12th February, 2016 passed by the learned Additional Sessions Judge and the order dated 23rd June, 2015 passed by learned Metropolitan Magistrate.

15. Consequently, the present petition and applications are dismissed.