

Delhi High Court

Kriplex Chits Pvt. Ltd. Through ... vs The State (Govt. Of Nct Of Delhi) ... on 21 September, 2007

Author: V Gupta

Bench: V Gupta

JUDGMENT V.B. Gupta, J.

1. By way of present petition filed by the petitioners they have sought quashing of order dated 31st July, 2007, passed by Mr. M.K. Gupta, MM in complaint case, under Section 138 of the Negotiable Instrument Act, which is fixed for final arguments.

2. The petitioner moved an application under Section 311 CrPC for recalling of the complainant for his examination in respect of the audio cassette and it was also prayed that audio cassette be sent to the Scientific Forensic Laboratory. It has been stated in the application that DW-1 filed audio cassette containing conversation between the accused and the complainant wherein it was admitted by the complainant that he has received half the amount of the cheque in question. As the complainant was not confronted with the cassette during his cross-examination, the authenticity of the cassette was challenged and the cassette was claimed to be fabricated one. In these circumstances, it has become necessary that the complainant be recalled for examination only in respect of his voice and conversation and in case he denies the voice, the audio cassette be sent for its Scientific Analysis.

3. Vide impugned order, application under Section 311 CrPC was dismissed by the learned Magistrate.

4. It has been contended by learned Counsel for the petitioner that provisions of Section 311 CrPC are purely discretionary and the same are to be construed liberally. The trial court has not afforded the opportunity to the petitioner to put the contents of the audio cassette in which the respondent has admitted the acceptance of money more particularly when respondent himself has suppressed this important fact from the Court. So the petitioner wants to recall the complainant only for the purpose of confronting him with his voice.

5. The relevant portion of the impugned order passed by the learned Magistrate reads as under:

The defense evidence was closed by learned predecessor of this Court on the first time on 14.7.2005. In view of aforesaid closure, the accused moved an application and vide order dated 30.09.2005 only one another opportunity was granted on the application of the accused to lead defense evidence. Accused availed 7 opportunities exclusively and two with the complainant for the same. The matter was repeatedly put for leading defense evidence vide order dated 6.7.06 as passed by the learned predecessor of this Court which is a reasoned order the DE was again closed. The accused moved another application for leading the defense evidence which was also disposed of vide reasoned order dated 5/10/06. Another application was moved by the accused 3rd time for leading defense evidence under Section 311 CrPC which was allowed by the learned predecessor of this Court dated 28.3.07. After examination of number of witnesses the defense evidence was finally closed 4th time on 11.4.07. As of now this is an application for re-examining the complainant again

by the accused. Learned Counsel Sh. Wadhwa states that the conduct of the accused cannot be seen at this stage for deciding instant application in view of estoppel principle. The matter pertains to the year 2003 and is pending for cross examination and evidence of parties cannot be taken in piece-meal and accused cannot be allowed to improve his case by seeking opportunity after opportunity. Even otherwise the court has seen case on merit. Audio cassette in question or his transcript could have been produced at the first available opportunity by the accused during cross examination of the complainant. However the same was not done. The question which learned Counsel for accused wants to prove by way of aforesaid audio cassette is in respect of some part payment being made. These questions has already been answered by the accused in his statement of accused recorded before the court on 4.3.05 in question No. 4 and 7.

Even otherwise it can be seen that the transcription of audio cassette was filed before the court on 1.5.05 much prior before the DE was finally closed on 11.4.07 and the accused counsel had all opportunities to raise the same which he failed. Application is nothing but gross abuse of law and same is dismissed with cost of Rs.500/- out of which Rs. 300/- to be paid in Delhi Legal Aid and Rs. 200/- to be given to the complainant.

6. The perusal of the above order shows that more than reasonable and sufficient opportunities have been afforded to the petitioner to prove his case and he had been moving one application or the other under Section 311 CrPC and furthermore the petitioner has succeeded in delaying the trial of the case for more than 2 years after his statement was recorded under Section 313 CrPC as early as on 4th March, 2005.

7. There has to be some time limit for the court to complete the recording of the statement of the witnesses and it is not the complainant who has been seeking the date or delaying the matter. Time of witnesses is equally precious as that of the accused and that the witnesses cannot be asked to come time and again to the Court as if they have no other work to do nor they can be called time and again for further cross-examination.

8. Under these circumstances, there is no occasion for this Court to exercise the jurisdiction under Section 482 CrPC since there is no illegality or infirmity in the impugned order passed by the learned Magistrate and if the present application is allowed, it would make a mockery of the law. In these circumstances the present petition is nothing but is a gross abuse of the process of law and is misconceived and frivolous one and has been filed just to delay the proceedings and deserves to be dismissed with heavy costs. Accordingly, the petition is dismissed with costs of Rs. 5,000/-. The petitioners are directed to deposit the costs with the trial court within four weeks from today, failing which the trial court shall recover the same in accordance with law.

9. Copy of this judgment be sent to the trial court.