

HIGH COURT OF DELHI

CORAM:HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

Date of Decision: April 10, 2024

CRL.M.C.12/2024 & CRL.M.A. 36/2024 and CRL.M.C.68/2024 & CRL.M.A.
273/2024

INTERNATIONAL DIAMOND SERVICES LTD ...PETITIONER

VERSUS

DIMEXON DIAMOND LTD. ...RESPONDENT

Legislation and Rules:

Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.)

Section 138 of the Negotiable Instruments Act (N.I. Act)

Section 311 Cr.P.C.

Subject: Criminal Miscellaneous Case involving the petitioner's appeal against the dismissal of an application under Section 311 Cr.P.C. for summoning a defense witness in proceedings under Section 138 N.I. Act.

Headnotes:

Criminal Revision Petitions under Section 482 Cr.P.C. - Petitioner accused in proceedings under Section 138 N.I. Act - Petitioner aggrieved against dismissal of application under Section 311 Cr.P.C. by Trial Court and upheld by ASJ - Dismissal of application seeking examination of witness Paresh K. Lal Mehta, Ex-Director of Kirti Ornaments Pvt. Ltd. - Cheques issued by petitioner company dishonoured - Allegations of unilateral cancellation of license causing loss - Petitioner seeking to call witness and produce documents - Trial Court and ASJ found no merit in application - Observations on wide discretion under Section 311 Cr.P.C. - Execution of cheques not

disputed by petitioner - Witness no longer associated with company - Complaint pending since 2006 - Petitions dismissed for lack of merits - Trial Court directed to dispose of matter expeditiously.

Referred Cases: None.

Representing Advocates:

Petitioner: Mr.Vishal Sharma, Mr.Vikash Sharma, Ms.Madhu Ramvani, Mr.Amit Sharma, Mr.Aneesh Shrestha, and Ms.Meenakshi

Respondent: Mr.Arun Kumar

J U D G M E N T ANOOP

KUMAR MENDIRATTA, J.

1. Separate petitions under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) have been preferred on behalf of the petitioner (who is accused before the learned Trial Court in proceedings under Section 138 N.I. Act) aggrieved against order of dismissal of application under Section 311 Cr.P.C. by learned M.M. vide order dated 30.01.2023 in CC No. 630926/2016 & 614437/2016 and upheld by learned ASJ vide order dated 23.11.2023 in CrI. Rev. No.145/2023 and 146/2023.

2. In brief, the complainant company namely M/s Kirti Ornaments Pvt. Ltd. was supplying jewellery to the accused company (petitioner) and against the outstanding amount of Rs.79,10,000/-, different cheques were issued, out of which cheques involved in the present cases were dishonoured on presentation. M/s Kirti Ornaments Pvt. Ltd. was subsequently merged with Dimexon Diamond Ltd. (respondent).

3. As per the case of the petitioner, an application under Section 311 Cr.P.C. was initially preferred on 21.07.2016 for calling five witnesses in defence which was partially allowed, by permitting to call only one witness vide order dated 06.09.2016. Criminal Revision No.204764/2016 & 204765/2016 preferred against aforesaid order were allowed by learned ASJ vide order dated 05.01.2022 considering the submissions made on behalf of the complainant that DW-3 Rajiv P. Mehta (Director of the Complainant Company in proceedings under Section 138 N.I. Act) will be able to produce record and depose. Accordingly, two witnesses were allowed to be summoned in defence. It is further the case of the petitioner that on

23.09.2022, DW-3 Rajiv P. Mehta was examined and deposed that he became the Director of the company only in 2013 and has no knowledge of transactions between the complainant (respondent herein) and the petitioner (accused).

In the aforesaid background, another application under Section 311 Cr.P.C. was preferred on 07.10.2022 by the petitioner, which stands dismissed by the learned MM vide order dated 30.01.2023 and upheld by learned ASJ in Criminal Revision vide order dated 23.11.2023.

4. Vide aforesaid application dated 07.10.2022 under Section 311 Cr.P.C., petitioner/accused seeks to examine witness Paresh K. Lal Mehta, Ex-Director of Kirti Ornaments Pvt. Ltd. along with documents, including Board Resolution pertaining to Kirti Ornaments Pvt. Ltd., involvement in Brightest Circle Jewellery Pvt. Ltd., communication with M/s De Beers Group/its subsidiaries/associate concerns in relation to manufacturing, marketing, selling rights of Nakshtra, Asmi and Sangini brands of diamond jewellery.

5. Learned Trial Court vide order dated 30.01.2023 noticed that issuance of cheque was admitted by the petitioner/accused company (International Diamonds Ltd.) but disputed the liability on the ground that original complainant Kirti Ornaments Pvt. Ltd. had unilaterally cancelled the license pertaining to Nakshtra, Asmi and Sangini brands of diamond jewellery causing immense loss to the accused.

It was observed that as per the case of the complainant, Kirti Ornaments Pvt. Ltd. was merged with Dimexon Diamond Ltd. and AR of the complainant had been cross-examined on behalf of the petitioner/accused at length but the aforesaid documents were not sought from the AR (Authorised Representative). Further, the learned ASJ-03 vide order dated 05.01.2022 had disallowed the examination of witness Paresh K. Lal Mehta in Crl. Rev. No.204764/2016 & 204765/2016 observing that said witness was no longer working with the respondent company and summoning shall result in unnecessary wastage of time of learned Trial Court. It was also observed that petitioner/accused was aware that Rajiv P. Mehta was Director of Dimexon Diamond Ltd. and was not an ex-Director of Kirti Ornaments Pvt. Ltd. as per the list of witnesses filed by the petitioner/accused and as such the fresh consideration for summoning of witness Paresh K. Lal Mehta did not appear to be tenable. Learned Trial Court also observed that since Paresh K. Lal Mehta was no longer associated with the complainant company, he would not be in possession of any documents of Kirti Ornaments Pvt. Ltd. (complainant)

which had merged with Dimexon Diamond Ltd. As such, it was held that petitioner/accused had been unable to show if the examination of said witness would be relevant/essential to the just decision of the complaint. It was also noticed that complaint is about 15 years old and is pending at the stage of defence evidence since 2016.

6. The aforesaid position has also been taken note of in the impugned order passed in CrI. Rev. Petition by the learned ASJ. It was further observed that documents to be produced on record through said witness namely Paresh K. Lal Mehta were not sought to be produced from the witness Bharat Bhushan and Rajiv P. Mehta, who were examined by him in pursuance to the orders passed by the Court of Sessions in CrI. Rev. No. 204764/2016 & 204765/2016. The said omission, in the view of learned Revisional Court was material since the Sessions Court while deciding CrI. Rev. No. 204764/2016 & 204765/2016, specifically gave permission to examine Rajiv P. Mehta as a witness *inter alia* in order to produce the summoned records/documents.

7. The contentions raised before the learned Trial Court as well as learned Revisional Court have been reiterated by the learned counsels.

8. The principle for deciding an application under Section 311 Cr.P.C. is wide and discretionary and the witness may be summoned only if the evidence appears to be essential to the just decision of the case and to avoid any prejudice to the accused, resulting in miscarriage of justice. However, the power should not be permitted to be exercised if the same is not germane to the issue involved or is taken as a ploy for delaying the trial unnecessarily.

On the face of record, a well reasoned order has been passed both by the learned Trial Court as well as learned Revisional Court, taking into consideration the factual position. The execution of cheques is not disputed by the petitioner/accused. In case the witness is no longer associated with the said company and is not in possession of the documents, it would remain an exercise in futility to direct summoning of the said witness (earlier Director of M/s Kirti Ornaments Pvt. Ltd.). It may also be observed that complaint pertaining to 2006 is still pending at the stage of defence evidence since 2016 and repeated efforts appear to have been made to prolong the trial.

9. Considering the facts and circumstances, petitions are devoid of any merits and are accordingly dismissed. Pending applications, if any, also stand disposed of. Since the complaint case is pending since 2006, learned Trial Court is directed to dispose of the petitions in an expeditious manner within a period of six months, as an outer limit.

A copy of this judgment be kept in connected petition and be also forwarded to the learned Trial Court/Revisional Court for information.

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