

(2013) 03 DEL CK 0155

In the Delhi High Court

Case No : Criminal M.C. 3258 of 2012 and Criminal M.A. 16602 of 2012 with Criminal M.C. 3270 of 2012 and Criminal M.A. 16617 of 2012, Criminal M.C. 3271 of 2012 and Criminal M.A. 16620 of 2012 and Criminal M.C. 3286 of 2012 and Criminal M.A. 16662 of 2012

Kashish Rastogi and Another

APPELLANT

Vs

Vasudeva Jewellers Pvt. Ltd.

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 243
Negotiable Instruments Act, 1881 (NI) — Section 118(a), 138, 139

Citation : (2013) 198 DLT 475

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Varun Goswami and Mr. Naveen Grover, for the Appellant; Dushyant Bhati, Proxy Counsel, for the Respondent

Judgement

Mukta Gupta, J.—The matter has been passed over twice however learned Counsel for the Respondent is not present. In these cases, the proceedings are pending before the learned Trial Court and are at the stage of culmination and the Petitions are required to be disposed of. The only issue that arises in the present petitions is whether the accused is entitled to call the witnesses as necessary for his defence or not. The Petitioners are accused in the complaint cases filed by the Respondent u/s 138, NI Act, which are pending before the learned Metropolitan Magistrate. The defence of the Petitioners/accused before the learned Trial Court is that the complainant/Respondent was acting as its broker with the MMTC and blank cheques duly signed had been given to him for onward payments to MMTC. The Respondent/complainant filled the same in his own name and misappropriated the same. Suggestions in this regard were duly given to the authorised representative of the Respondent/complainant before the learned Trial Court. However, to prove the fact that cheques were dishonoured not for insufficiency of funds but because the Petitioners had stopped payment

due to the fact that they had been misappropriated, the Petitioners filed applications before the learned Trial Court to summon six witnesses in their defence. Two witnesses were the Petitioner No. 1 himself who is the proprietor of Petitioner No. 2, and his father. The remaining four witnesses were Manager/ clerk concerned of Allahabad Bank, Parliament Branch, Clerk concerned/record keeper/officer in-charge of MMTC, Record Clerk of Anti Terrorist Cell, Delhi Police, Lodhi Road, New Delhi and Record Clerk of this Court in Civil Suit bearing No. CS(OS) 678/2009. The first two witnesses i.e. from the Allahabad Bank and MMTC were required to prove the records of the Current Account No. 5705 for the period 3rd August, 2006 to 31st December, 2006 and relevant record of M/s. Kashish Associates from MMTC from 1st July, 2006 to 30th October, 2006. Record of the Delhi Police was required to prove the complaint filed by the Respondent/complainant to the police in which he had taken a diametrically opposite stand and Record Clerk of this Court was required to prove the pleadings in the civil suit bearing No. 678/2009.

2. In T. Nagappa Vs. Y.R. Muralidhar, the Hon''ble Supreme Court held--

7. When a contention has been raised that the complainant has misused the cheque, even in a case where a presumption can be raised u/s 118(a) or 139 of the said Act, an opportunity must be granted to the accused for adducing evidence in rebuttal thereof. As the law places the burden on the accused, he must be given an opportunity to discharge it.

8. An accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognised by Parliament in terms of Subsection (2) of Section 243 of the Code of Criminal Procedure, which reads as under--

243. Evidence for defence.--(1) ***

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this Section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

3. It is well settled that the Court has to look into the relevancy of the witnesses sought to be brought by the defence and in case the defence seeks to bring unnecessary witnesses to delay the trial, the Court can certainly curtail the same

and regulate the proceedings. However, in that endeavour the defence of the accused cannot be curtailed. Perusal of the application of the Petitioners filed before the learned Trial Court and the cross-examination of the witness of the complainant conducted shows that witnesses sought to be examined by the accused/Petitioners herein are relevant for their defence. In view thereof, the impugned order dated 2nd March, 2012 passed by the learned Trial Court and the order dated 1st June, 2012 passed by the learned Sessions Judge are set aside. The Petitioners are permitted to examine the witnesses as mentioned in the application dated 18th October, 2011 and no other witness. The Petitions and applications are disposed of. Order dasti.