



\$~17

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 30<sup>th</sup> January, 2025*

+ **CRL.M.C. 2687/2021**

1. **OM LUNGI HOUSE**
2. **ANIL NARANG**
3. **PRAVEEN NARANG**
4. **MANOJ NARANG**

.....Petitioners

Through: Mr. Katickay Mathur and Mr. Shanker Kashyap, Advocates.

versus

**CHHABRA SAREE SELECTION**

.....Respondent

Through: Appearance not given.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T (oral)**

1. A Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C"*) has been filed for setting aside the Order dated 21.10.2019 *vide* which the learned M.M had dismissed the Application under Section 311 of Cr.P.C filed on behalf of the Petitioner/Accused.
2. ***Briefly stated***, a Complaint under Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as "N.I Act"*) was filed by the



Respondent/Complainant which culminated in Judgment dated 11.09.2018 and Order on Sentence dated 18.09.2018.

3. An Appeal was preferred, which was allowed by the learned ASJ vide Judgment dated 16.10.2018 by observing that the Statement of Accused under Section 313 of Cr.P.C had not been recorded and the Judgment and Order on Sentence were set aside and case was remanded back for doing the needful.

4. While learned M.M was seized of the remanded case, it was realized that the Notice under Section 251 of Cr.P.C. had been framed against three Partners but not against the Partnership Firm/Complainant. Consequently, a fresh Notice was also framed against the Partnership Firm M/s Om Lungi House on 06.09.2019. Thereafter, the matter has been listed for final arguments.

5. The accused had filed an Application for re-examination of the Complainant under Section 311 of Cr.P.C. but the same has been dismissed vide impugned Order. It is *submitted on behalf of the Petitioners* that since the Notice for the first time came to be framed against the Partnership Firm, the Petitioners have a right to further cross-examine the Complainant in the light of the amended Notice. The learned M.M therefore, erred in declining the Application of the Petitioners under Section 311 of Cr.P.C. by observing that the Petitioner had already cross-examined the Complainant. Aggrieved, the present Revision Petition has been filed.

6. *Learned counsel on behalf of the Respondent* has contended that learned M.M has rightly observed that the Complainant had been extensively cross-examined and there was no occasion for the Complainant



to be further cross-examined. It is submitted that the Order does not suffer from any infirmity and the Petition is liable to be dismissed.

**7. Arguments heard and record perused.**

8. The Complaint under Section 138 of NI Act was filed on 23.11.2010 in respect of five cheques for a total sum of Rs.9 lakhs, by the Respondent, Chhabra Saree Selection against Om Lungi House, a Partnership Firm of which Anil Narang, Praveen Narang and Manoj Narang are the partners. A Notice under Section 251 of Cr.P.C. was framed on 04.05.2011 against the three Partners to which they pleaded not guilty. After recording of the entire evidence, the Petitioners were convicted under Section 138 NI Act *vide* Judgment dated 11.09.2018 and sentenced *vide* Order on Sentence dated 18.09.2018.

9. However, an Appeal was preferred before the learned ASJ who *vide* his judgment dated 16.10.2019 set aside the judgement by noting that the Statements of the Accused had not been recorded under Section 313 of Cr.P.C.

10. The learned M.M thereafter, examined all the three Partners of the Petitioner Firm under Section 313/281 of Cr.P.C. At this stage, it was noted that the Notice under Section 251 of Cr.P.C had been framed against the three partners and not against the Partnership Firm. Consequently, Notice was framed afresh against the Firm on 06.09.2019.

11. Thereafter, the Petitioner moved an Application under Section 311 of Cr.P.C for further cross-examination of the Complainant which has been dismissed by the learned M.M by observing that the perusal of the case file reflected that the questions and suggestions regarding to all the contentions



raised by the accused through the present Application, had already been categorically put to the Complainant in his cross-examination which was conducted at length on 15.10.2011 which already forms part of the record. The averments made by the accused for further cross-examination of the Complainant already stood answered by the Complainant in no ascertain terms in his cross-examination. No fruitful purpose shall be served by calling the Complainant again for cross-examination.

12. Learned M.M. further observed that the Petitioner now wishes to re-examine the complainant on the same very point *albeit* in a different manner, which cannot be allowed by way of present Application. *“Spurts of ingenuity, as and when they strike a party, cannot be allowed to form the basis of repeated examination and re-examination of the other party by seeking refuge under Section 311 of Cr.P.C. This Section is not meant to enable any party to keep throwing a dice at his luck again and again on points which have already been dealt with on prior occasions. The Court, therefore, concluded that a sufficient cross-examination on the grounds mentioned in the Application had already been done and allowing the Application would only protract the trial with no value addition.”* Consequently, the Application was dismissed.

13. Admittedly, the Notice under S.251 of Cr.P.C. has been framed for the first time against the Partnership Firm. Having done so, the Petitioner’s right to seek re-examination of the Complainant, cannot be denied. At this stage, it cannot be pre-empted that the questions would essentially be same as already put to the Complainant. Consequently, the impugned Order is set aside and the Application under Section 311 Cr.P.C., is allowed.



14. The parties are directed to appear before the learned M.M on 14.02.2025, the date already fixed, who shall give two opportunities to the accused persons for cross-examination of the Complainant. However, the learned M.M may ensure that there are no repeat questions put and the cross-examination is confined to the Partnership Firm.

15. The Petition accordingly stands disposed of.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**JANUARY 30, 2025**

*va*