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

% **Pronounced on: 2nd August, 2022**

\+ CRL.M.C. 3223/2022, CRL.M.As. 13558/2022 (for stay)

KANWAL NAIN SINGH MOKHA ..... Petitioner

Through: Mr. Praveen Suri, Advocate

versus

REKHA KHURANA ..... Respondent

Through: Mr. Gurpreet Singh, Advocate

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

O R D E R

1. This petition has been preferred by the petitioner/complainant under Section 482 Cr.P.C. being aggrieved by the order/cross-examination dated 7th May, 2022 in Complaint Case No.19224/2016.

2. The petitioner had filed the complaint under Section 138 of the Negotiable Instruments Act, 1881 ('N.I. Act') against the respondent. The grievance is that as per the order dated 7th July, 2022, during the course of examination of DW-2, the learned Trial Court disallowed two questions, as being irrelevant to the matter in issue.

3. Mr. Praveen Suri, learned counsel for the petitioner, submitted that the learned Trial Court had erred in disallowing the two questions. It was submitted that the petitioner has filed other cases against the respondent

and her daughter-in-law, as also Swarn Singh for various amounts, both under Section 138 of the N.I. Act as well as for recovery before the Civil Court. The learned counsel for the petitioner submitted that the instant case had been filed when the cheque issued by the respondent was dishonoured. The respondent was the one who had given the post dated cheque No.871958 dated 11th March, 2016 for a sum of Rs.17 Lakhs drawn on Cooperative Bank and had signed the promissory note also. This cheque was given towards repayment of a friendly loan/financial assistance to the tune of Rs.17 Lakhs given by the petitioner for a period of two months to the respondent, who was then in dire need of money.

4. The learned counsel for the petitioner submitted that the defence raised by the respondent, recorded in the notice served to her under Section 215 Cr.P.C., was that the loan had been taken by her son and she had no legal liability in the matter. She admitted her signatures on the cheque. Her stand was that the cheque had been obtained from her as her son Vikas Khurana was in dire need of money and that too in the sum of Rs.2 Lakhs for a period of six months. Therefore, the cheque in question had been misused.

5. In that context, according to the petitioner, the complainant had been asked questions in this regard during his cross-examination (placed on the e-file at pages 70 to 79). Therefore, the petitioner/complainant be given the opportunity to ask the questions and further cross-examine the son of the respondent, who was examined as DW-2.

6. It was further submitted that the learned Trial Court ought to have considered the relevancy of the question in terms of the Section 5 of the Indian Evidence Act, 1872. Since the matter related to the claim of the accused, therefore, the questions were relevant to determine existence or non-existence of the fact. It was submitted that law gave a right to the petitioner to put a question for the purposes of impeaching the creditworthiness of the witness DW-2 and thus, the two questions were relevant and be allowed to be put to the witness.

7. Mr. Gurpreet Singh, learned counsel for the respondent, on the other hand, submitted that witness DW-2 had been summoned and examined only to prove the CD. The questions in cross-examination had to be related to the examination-in-chief and could not be unrelated questions. It was submitted that the two questions specifically put to the witnesses were vague and the question put was relating "any other transaction" and such a fishing question was not relevant at all. It was also submitted that the present petition was not maintainable and the petition was liable to be dismissed.

8. I have heard the submissions of both the counsel and have perused the judgment of a Coordinate Bench of this Court being ***R.K. Chandolia Vs. CBI & Ors.,*** 2012 SCC OnLine Del 2047 relied upon by the learned counsel for the respondent.

9. This very judgment would be a reply to the arguments of the learned counsel for the respondent that the present petition under Section 482 Cr.P.C. was not maintainable. The court is not precluded in looking into

the matter to decide whether there has been any error or perversity in the order under challenge and the nomenclature of the petition would not predicate the exercise of the powers ***(Pepsi Foods Limited vs Special Judicial Magistrate, (1998) 5 SCC 749).*** There is no ground therefore to dismiss the petition at the threshold.

10. Any litigant who comes to the court with a grievance and every litigant who defends a case against him have necessarily to produce evidence in support of their case. The law of evidence governs the recording of evidence so that the inquiry is not rendered a meandering exercise, but is focused towards a fair decision of the *lis*.

11. What constitutes relevant facts that need to be proved are explained by the Indian Evidence Act, 1872. It lays down the following :

(i) *"evidence may be given in any suit or proceedings of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others"* **(see : Section 5 of the Indian Evidence Act, 1872)**.

(ii) "*Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places"* **(see : Section 6 of the Indian Evidence Act, 1872)**.

(iii) "*Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant"* **(see : Section 7 of the Indian Evidence Act, 1872)**.

(iv) "*Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact, including conduct"* **(see : Section 8 of the Indian Evidence Act, 1872)**.

(v) "*Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose"* **(see : Section 9 of the Indian Evidence Act)**.

12. The provisions of Sections 10 to 16 of the Indian Evidence Act elucidate further what facts would be relevant and to what extent.

13. The Evidence Act also sets out the manner in which the evidence is to be recorded. Chapter-VII relates to the *"burden of proof"* and "*presumption and estoppels"*. But these aspects are not discussed here, as the question in the present petition relates to the right to cross-examine the

witnesses. Chapter-X comes into the picture as it relates to the *"examination of witnesses"*. Section 135 provides for *"the order of production and examination of witnesses"*. Section 136 relates to the *"admissibility of evidence"* which the Judge is to determine. Section 137 defines *"examination-in-chief, cross-examination and re-examination"* while Section 138 prescribes the *"order of examinations"*, i.e., the witnesses are to be examined-in-chief then cross-examined and thereafter, re-examined. It underlines that the examination and cross-examination must relate to the relevant facts. The cross-examination need not be confined to the facts to which the witness testified in his examination-in-chief. The re-examination is to be directed to the explanation of matters referred to in the cross-examination and even if a new matter, with the permission of court, is introduced in re-examination, then the adverse party would have a further right to cross-examine on that matter.

14. Thus, it is clear that both examination and cross-examination must relate to relevant facts. The reason why cross-examination is not confined to the facts to which the witnesses testified is obvious. The witness who is examined-in-chief is from the side of the party who has called him. Therefore, his testimony would be, in-chief relating to the case of that party. But since the opposite side is also required to prove their case, the right has been given to such adverse party to put questions that would be beyond the examination-in-chief. Nevertheless, cross-examination cannot be such that has no bearing to the case before the learned Trial Court nor can it be a vexatious or a roving inquiry. The cross-examination cannot encompass questions that are scandalous or intended to cause humiliation

to the witness, on the plea that the questions can go beyond the examination-in-chief. While there is a right to ask questions of a witness to impeach his creditworthiness, it cannot descend to harassment and humiliation of the witness.

15. Thus, the learned Trial Judge has to keep a close watch on the examination of a witness, whether during examination-in-chief or cross-examination and even during re-examination, when permitted. Only such questions must be allowed which are relevant to the matter at hand and to the rival stands, elucidating or disproving the rival cases. Where the court comes to a conclusion that a question, particularly, in cross-examination is irrelevant or prompted by such motives such as harassment or annoyance to the witness or to delay the conclusion of the cross-examination of the witnesses by embarking on a rambling course, the Trial Judge is well empowered to put an end to such questioning.

16. The question at hand is whether the Trial Court has rightly disallowed the questions. To answer that question, the petitioner ought to have established how the questions were relevant. Merely because certain questions have been put during the cross-examination of the complainant/petitioner is not a reason enough, as relevance is not a question of parity. The questions put to the complainant in his cross-examination would have been considered for their relevance and are not in question before this Court. What however is, are the two questions disallowed by the learned Trial Court, namely,

Q. Have you or your mother or your wife taken a friendly loan from any other person? and

*Q. Is it correct that in another case titled as "**Parminder Singh Bindra Vs. Jayti Khurana**", your wife is an accused and the same case is pending before the undersigned court?"*

17. The learned Trial Court disallowed the questions being vague and having no relevancy to the transaction in question. In the petition, an attempt has been made to explain why the questions were relevant at page 21. In para 4(q) it is pleaded that since DW-2 had appeared for the respondent, it was necessary to put all transactions which had been done by her being the mother of DW-2 or his other family members "to prove the case of the complainant". The second explanation is given in para-4(r) that the question relating to "all those transactions" were necessary to prove the respondent was a habitual offender. It appears that these explanations have not been offered to the learned Trial Court. In the grounds taken, it is not asserted that these explanations had been given to the court. Rather in ground-D, a different reason has been provided for seeking the opportunity, to put the questions and that is to contradict "manipulated" call recording of conversations between the DW-2 and the petitioner and to show that the defence of friendly loan taken by DW-2 and denied by the respondent, was intended to defraud the petitioner. Interestingly in para-4 (after the grounds), liberty is claimed *"to further cross-examine DW-2 and put his case as well as every relevant fact before DW-2 in order to prove his case"*. This statement appears more an attempt to recall the DW-2 for further cross-examination rather than to limit the cross-examination to the

disallowed questions. It is trite that no party can be allowed to fill-in lacunae left in the examination of the witnesses on the basis of hindsight. Clearly, such a prayer cannot be entertained.

18. However, turning to the question of whether two questions have been rightly or wrongly disallowed, it may be seen that the very case of the petitioner is that it was the respondent who had borrowed from him and the cheque in question has been issued by her towards repayment. Whatever be the defence taken by the respondent, the petitioner would have to prove his case. The respondent too would have to prove that she had no liability when she had issued the cheque. Whether the respondent or the wife of DW-2 had taken a friendly loan from any other persons is absolutely irrelevant as an answer either way would not help in arriving at a decision in the case at hand. The pendency of another case titled *"**Parminder Singh Bindra Vs. Jayti Khurana**"* has no connection with the complaint case that the petitioner has filed, merely because Jayti Khurana is the wife of DW-2. The pendency of another case would hardly be relevant to the fact in issue before the learned Trial Court, which is whether the offence under Section 138 of the N.I. Act has been committed by the respondent.

19. This Court is of the considered view that there is no perversity in the order of the learned Metropolitan Magistrate disallowing these two questions. Neither has it resulted in any miscarriage of justice.

20. The petition is devoid of merits and is accordingly dismissed alongwith the pending application.

21. It is made clear that nothing contained in this order shall be an expression on the merits of the case to be decided after due trial.

22. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

AUGUST 02, 2022
ck