

+*

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment reserved on : 02.07.2009

Judgment delivered on : 15.07.2009

+

Crl. M.C. Nos. 3773/2008, 3774/2008,
3788/2008, 3789/2008, 3790/2008,
3791/2008 & 3792/2008

M/S NOVA VISION ELECTRONICS
PVT. LTD. & ANR.

..... Petitioners

versus

STATE & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Vijay Aggarwal & Mr Rakesh Makhija,
Advocates

For the Respondent : Mr. V.K. Kalra, Advocate for Respondent No. 2.
Mr R.N. Vats, Additional Public Prosecutor for
State.

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may
be allowed to see the judgment ?
2. To be referred to Reporters or not ? Yes
3. Whether the judgment should be reported
in the Digest ? Yes

RAJIV SHAKDHER, J

1. The seven captioned petitions are instituted under Section 482 of the Criminal Procedure Code, 1973 (in short the 'Cr.P.C.') whereby a challenge is laid to seven separate but identical orders of even date i.e., 03.10.2008 passed by the Learned Chief Metropolitan Magistrate, Delhi (in short the 'CMM'). By these impugned orders the petitioners' application both under Section 219 read with Section 220 of the Cr.P.C. and Section 145(2) of the

Negotiable Instruments Act, 1881 (in short the 'N.I. Act') filed in each of the seven cases stand rejected with cost of Rs 5,000/- each.

2. In view of the fact that, even though the learned CMM has passed separate orders of even date in respect of applications filed in each of the seven complaints, the impugned orders in terms are identical, I propose to dispose of these petitions by a common order.

3. Before I proceed further, it may be relevant to extract the main prayers made by the petitioners in the said applications.

Application under Section 219 & 220 of Cr.P.C.

"To try all the seven cases pending before this Hon'ble High Court between the parties arising out of the same transaction jointly by single trial."

Application under Section 145(2) of the N.I. Act.

"It is, therefore, most respectfully prayed before this Hon'ble Court that, in view of the abovementioned facts and circumstances of the present matter, this Hon'ble Court may, kindly, be pleased to examine on oath in person, the authorized representative of the complainant company, who must have/had the knowledge of the facts contained therein the present matter, with the accused/applicant."

4. The institution of the said applications arose in the backdrop of facts and circumstances which for the purposes of convenience are best gleaned from the present petitions under consideration. The broad narrative in the petitions is as follows:

4.1 Respondent-2, which is a registered partnership firm as also the complainant in each of the seven cases instituted in the court

of the learned CMM, during the period 2001 – 2003, was issued thirteen (13) cheques (in the petition there is a reference to 15 cheques while at page M of the petition, the number of cheques referred to are 13) towards purchases made by the petitioners from time to time. Each cheque is in the sum of Rs 1.00 lac. The sum total of the said cheques is Rs 13 lakhs. Each of these cheques was dishonoured albeit on different dates. Consequently, respondent-2 triggered the provisions of Section 138 of the N.I. Act. The legal pre-requisites were complied with, prior to institution of the complaints, in the court of the learned CMM. A summary of the necessary details, which in a sense is the nuts and bolts of an action under Section 138 of the N.I. Act are best captured in the table below, which is based on details given by the petitioners at page M of the petition.

S.No.	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Case No.	3375/06	3375A/06	3374/06	3403/06	3404/06	2312/07	2313/07
Complainant	M/S Jain Motors Company	M/S Jain Motors Company	M/S Jain Motors Company	M/S Jain Motors Company	M/S Jain Motors Company	M/S Jain Motors Company	M/S Jain Motors Company
Cheque No.	225052	225053	225054	225055	225059 168199 168200	168201 168202 168203	168204 168205 168206
Amt. of Cheque	1,00,000	1,00,000	1,00,000	1,00,000	1,00,000 1,00,000 1,00,000	1,00,000 1,00,000 1,00,000	1,00,000 1,00,000 1,00,000
Dt. of cheque	14.12.01	14.02.02	14.04.02	14.06.02	12.02.03 12.06.03 14.06.03	10.10.03	29.09.03
Date of dishonour/ memo	06.06.02	13.07.02	22.07.02	26.07.02	12.06.03	13.10.03	03.10.03
Complaint filed on	05.08.02	04.09.02	04.09.02	13.09.02	04.08.03	19.11.03	19.11.03
Summoning Order	04.12.02	29.10.02	29.10.02	20.12.02	09.09.03	01.09.04	01.09.04

4.2 A perusal of the table would show that out of the seven (7) complaints four (4) were filed between August and September, 2002, while the remaining three (3) were filed between August and November, 2003. Summons were issued in four (4) cases

between October and December, 2002, while in the remaining three (3) cases, they were issued between September, 2003 and September, 2004.

4.3 To be noted at this stage - it is not disputed by the learned counsel for the petitioners that a separate affidavit by way of an evidence has been filed on behalf of the respondent No.2 by its authorized representative in each of the seven cases. There is no other witness cited by the respondent-2/complainant.

4.4 The applications under Section 219 read with Section 220 of the Cr. P.C. were filed on 18.01.2008, while those under Section 145(2) of the N.I. Act were filed on 03.10.2008.

5. A bare perusal of the dates and events set out above would bring to fore the fact that there has been a considerable delay and unexplained laches on the part of the petitioners in filing the above-mentioned applications, the dismissal of which resulted in the institution of the present petition. On this ground alone, the petition in my view is liable to be dismissed since the inherent powers of the court is meant to prevent abuse of the process of Court and secure ends of justice and not otherwise. The action of the petitioners does not subscribe to any of the said parameters. But since the learned counsel for the petitioners has made an impassioned plea that dismissal of the applications has resulted in a great prejudice to him, I decided to examine his submissions.

5.1 The learned counsel for the petitioners has articulated three issues before me with respect to the dismissal of the said application.

(i) Failure to order joint trial in terms of Section 219 and Section 220, Cr.P.C. of the seven cases, was prejudicial to the petitioners interest and hence the impugned order was illegal.

(ii) Section 145(2) of the N.I. Act mandated an examination on oath of the authorized representative of the complainant once an application to that effect is made by the accused.

(iii) The learned CMM had no power under the provisions of the Cr.P.C. to impose cost while dismissing the applications filed by the petitioners. In any event his absence at the hearing was not deliberate.

5.2 In support of the first issue the learned counsel submitted that the failure on the part of the learned CMM to exercise his jurisdiction to order a joint trial is prejudicial to the interest of the petitioners, in as much as, even though the petitioners may be charged separately, they will be tried once, which apart from the convenience and saving in time and expense would prevent disclosure of their defence in the event one trial is ordered as against the situation obtaining presently, whereby they are required to go through seven separate trials. In support of this submission the learned counsel relied upon the provisions of Section 219 and Section 220 of the Cr.P.C. Special emphasis was laid on illustration 'd' of Section 220.

5.3 The learned counsel further contended that if joint trial is not ordered the petitioners run the risk of being sentenced consecutively as against being subject to concurrent sentences. In support of his submission reliance was placed on sub-section (5) of

Section 220 read with Section 71 of the Indian Penal Code, 1860 (in short the 'IPC') and Section 31 of the Cr.P.C. To make good his submission the following judgments were cited before me.

Adnan Bilal Mulla vs State of Maharashtra 2006 Crl. L.J. 564 at page 568 paragraph 21; Smarty Machra & Anr. vs State (Govt. of NCT of Delhi) 2007 (2) JCC 1570; Raja Dayanand vs State 2004 (3) JCC 1886; and Vijay Mallya (Dr.) vs Enforcement Directorate 141 (2007) DLT 202.

5.4 As regards the learned counsel's contention with regard to examination on oath of a person filing an affidavit by way of evidence is concerned, the same is based on analogy drawn between the provisions of Section 145(2) of the N.I. Act and Section 296(2) of Cr. P.C. To buttress his argument the learned counsel has relied upon the judgment of the Supreme Court in the case of ***State of Punjab vs Naib Din (2002) SCC (Crl.) 33 at page 37 paragraph 8.***

5.5 As regards the third issue which pertains to imposition of cost the learned counsel for the petitioners submitted that his non-appearance on 3.10.2008 before the Court below, when the impugned order came to be passed, was occasioned on account of the fact that on that very date and time he was appearing in a matter listed in this Court. His explanation for not being able to appear even in the post-lunch session was that the matter listed in this Court went on for a substantial part of the day and, since the Court after hearing arguments proceeded to dictate the judgment in court, it became impossible for him to physically appear before the learned CMM on the said date. He thus submits that his Crl. M.C. 3773/2009

absence at the hearing was not deliberate. In any event the learned counsel contends that the order imposing cost will have to be set aside, since the Cr. P.C. does not confer any power on the Magistrate to impose cost.

6. As against this Mr Kalra, learned counsel appearing for the respondent No. 2 relied upon the impugned order to demonstrate that both the petitioners and his counsel had adopted dilatory tactics only to delay the culmination of the proceedings instituted in the Court below. He laid stress on the fact that the case has been pending disposal for six years and the cross-examination of the complainant/witness has not taken place despite service of notice on the accused, more than two years ago. He submitted that the record of the Court below would show a consistent pattern of absence of both the counsel and the accused.

6.1 As regards issue of joint trial Mr Kalra relied upon the view expressed by the Court below that since the complainant is prosecuting the case, the provisions for a joint trial in the Cr.P.C. should enure to its benefit. Since the complainant in this case has not sought a joint trial, no right is vested in the petitioners/accused to insist on a joint trial as a matter of right. Mr Kalra made it a point to stress that the application is woefully belated and hence has been rightly rejected by the Court below.

6.2 As regards the submission with respect to the examination on oath of the authorized representative of the complainant, who had filed his evidence by way of an affidavit, Mr Kalra relied once again on the reasoning given in the impugned order as also the

judgment of the Single Judge of this Court in the case of ***Radhe Shyam Garg vs Naresh Kumar Gupta dated 09.05.2008*** passed in ***Crl.MC 1522/2008***; which has been affirmed by the Supreme Court vide its judgment dated 05.05.2009 in Criminal Appeal No.912/2009.

6.3 On the issue of costs the learned counsel for the respondent No.2 submitted that in view of the conduct of the petitioners the direction to pay cost as contained in the impugned order deserves to be sustained.

7. Having heard the learned counsel for the parties, my opinion on the issues is as follows:-

7.1 The first issue whether the learned CMM should have, in the facts and circumstances of the case, ordered a joint trial. For this purpose, it may be relevant to note the provisions with respect to joinder of charges which are provided in Part B of Chapter XVII of the Cr.P.C. The Sections in the said part of Chapter XVII span from 218 to 224. Section 218 in a sense embodies a general rule which postulates that for every distinct offence of which any person is accused of, there shall be a separate charge for each of the said offences and every such charge shall be tried separately. The Section contains a proviso which enables an accused to move a written application, and if the Court is of the view that no prejudice would be caused to the accused, it may try all or any number of the charges framed against the accused. Sub-section (2) clearly stipulates that the provisions of Section 218 shall not impinge upon the provisions of Sections 219, 221 and 223.

Therefore, a bare reading of Section 218 brings to fore the point that the law requires that for each distinct offence a separate charge should be framed and each charge should be tried separately. The exceptions are provided in the subsequent provisions, that is, Sections 219 to 221 and 223.

7.2 In the present case, the learned counsel for the petitioners has relied upon Sections 219 and 220 of the Cr.P.C. to buttress his submissions that a joint trial ought to have been ordered.

7.3 Section 219 stipulates that when a person is accused of more than one ***offence*** of the ***same kind*** which are committed within a time span of 12 months from first to the last of such offences, whether in respect of the same person or not, the accused may be charged with, and tried at one trial for any number of offences not exceeding three (3). Sub-section (2) provides that offences are of the same kind when they are punishable with the same amount of punishment under the same Section of the IPC or of any special or local law. The proviso not being relevant for the purposes of this case has not been referred to herein. A bare reading of Section 219 would show that firstly, it is an exception to the general rule laid out in Section 218 of the Cr.P.C., which stipulates separate charges for each distinct offence and each charge be tried separately. Section 219 thus being an exception to the general rule crafted in Section 218 permits joint trial if a person is accused of more offences than one, provided they are of the same kind and they are committed within a time frame of 12 months as indicated in the provision. The limiting factor being that the Section enables a Court to order one

CrI. M.C. 3773/2009 Page 9 of 21

trial in respect of three charges for three offences of the same kind even though they may be committed against different persons. On the face of it, Section 219 is not applicable to the facts of the present case since the petitioners has asked for a joint trial with respect to seven cases. Even if one were to assume for the sake of argument that these were offences of the same kind committed within a period of 12 months, the provision would not apply in view of the statutory limit prescribed therein. The purpose of the statute is clear that if more than three charges are tried by a single trial the accused is likely to be bewildered and hence, the legislature abjures the Court from joinder of charges of more than three offences in a single trial.

7.4 Section 220 deals with a situation where a person is accused of having committed more than one offence in respect of series of acts which are ***so connected*** to form the ***same transaction*** then it is permissible for the Court to order a single trial for each of the offences with which he is charged. Sub-section (2) takes into account a situation where a person may be charged with one offence of criminal breach of trust or misappropriation in respect of several acts or items within a time span of one year then by specifying gross sums in accordance with the provisions of sub-section (2) of Section 212 or with respect to more than one offence with a limit of a gross sum specified by breaking up the items or acts committed in the course of 12 months into two or three periods as per the provisions of Section 219(1), the connected offences of falsification of accounts which facilitate or conceal the offence or offences of criminal breach of trust or misappropriation,

can be ordered by a Court to be tried by a single trial. Sub-section (3) deals with a situation where an act which is alleged to constitute an offence falls under two or more separate definitions provided in law in force, then the persons accused can be charged with and tried by a single trial in respect of each of such offences. Sub-section (4) of Section 220 deals with a situation where a person charged is alleged to have committed several acts which by themselves constitute a separate offence but when these offences are combined may constitute a different offence. The purpose is to charge and if found guilty, punish the person alleged to have committed such acts with the graver offence. This sub-section deals with a situation where series of smaller offences when combined attain an aggravated form of offence.

7.5 Sub-section (5) of Section 220 makes it clear that the provision which deals with trial will not impact the provisions of Section 71 of the IPC which deals with the limits on punishment for an offence made of parts forming an offence by themselves.

7.6 Sections 221 and 222 of the Cr.P.C. are in a sense an exception to the rule that a person cannot be convicted unless he is specifically charged in respect of an offence. Sub-section (1) of Section 221 would ordinarily apply where the person is accused of an act or series of acts, however, a doubt may arise as to which of the several offences, the facts which when proved, would it be applicable to. Thus, sub-section (1) would apply in a situation where the accused is alleged to have committed an act or series of acts which are of the nature that there is a doubt in the mind of the Court as well as that of the prosecution agency that, if the

CrI. M.C. 3773/2009 Page 11 of 21

facts alleged are established, then which of the offences would the accused be guilty of. In such a situation, the Court is empowered to charge the accused having committed any of such offences cumulatively or alternatively.

7.7 Section 222 deals with a situation which enables the Court to convict a person of a minor offence even though the accused is not charged with it if the charge is with respect to an offence consisting of 'several particulars' which when combined and proved by the prosecution would form a complete minor offence. The rationale being that the notice of graver charge brings to notice of the accused all circumstances which go into constituting a minor charge. The sub-section (2) of Section 222 empowers the Court to reduce an offence from major to a minor offence if the facts proved suggest the same, although the accused is not charged with it. Similarly, sub-section (3) takes into account a situation whereby an accused is charged with an offence but not with an attempt to commit such offence. The court is empowered to charge the accused with an attempt to commit an offence although the accused is not separately charged with respect to the attempt. Sub-section (4) not being relevant for the purposes of the case need not be discussed.

7.8 Section 223 deals with joinder of charges against **two** or **more persons** in the same trial. This is in contradistinction to provisions of Sections 219 to 222 which deals with joinder of charges in respect of the same person in a single trial. This provision is also, as stated earlier, an exception to the general rule

laid out in Section 218 that every offence must be charged and tried separately.

7.9 This brings us to the last Section i.e., Section 224 which permits the complainant or the State conducting the prosecution to withdraw other charges against the accused if he is convicted of one of the many other charges framed against him before the other charges are tried. This of course has to be done with the consent of the Court or the Court on its own accord may stay the inquiry into, or trial of such charge or charges. The effect of such withdrawal results in an acquittal of the accused in respect of the charge or charges so withdrawn unless the conviction is set aside in which case the Court is empowered to proceed with the inquiry or trial of the charge or charges so withdrawn.

8. A brief overview of the provisions of Sections 218 to 224 would show that the submissions of the learned counsel for the petitioners is completely untenable. The general rule is that the accused should be charged in respect of each distinct offence alleged to have been committed by him and he is entitled to a separate trial with respect to each of such charge in accordance with the provisions of Section 218 of the Cr.P.C. The exceptions culled out in Sections 219 and 220 apply to a situation as indicated above, where the same person is accused of more offences than one of the same kind committed within a time frame of 12 months taken from the first to the last of such offences. The limiting factor being that they cannot exceed three (3), and the Court cannot order a single trial in respect of more than three (3) such offences with which the accused is charged. As mentioned

hereinabove, in the facts of the present case the same is clearly not applicable. The petitioners on their own showing are the accused in seven (7) cases. As regards the learned counsel's submission with respect to the applicability of Section 220 of the Cr.P.C., in my view, the same is again without merits. For Section 220 of the Cr.P.C. to apply, it is important that series of acts which comprise of several offences are connected in a manner that they form one continuous whole i.e., one single transaction. In the instant case, it is not disputed by the petitioners that thirteen (13) cheques of different dates were issued by the petitioners. The said cheques were presented by the respondent no.2 once again on different dates. The dates of dishonour of the said cheques are also different and as a matter of fact, not only the information with respect to dishonour was received on different dates but also the legal notices issued in respect of dishonour of each of the said cheques also carried different dates. Importantly, from the averments made in the petition, it is clear that the said cheques were issued by the petitioners to respondent no.2 with respect to separate purchase transactions. In my view, the provisions of Section 220 of the Cr.P.C. are not applicable to the facts and circumstances of the present case as each transaction was separate. The transactions were not interconnected as a continuous whole so as to form one single transaction. Each purchase transaction being separate there was no continuity of action and each act was complete by itself. ***See Nanak Chand & Ors. vs Emperor: AIR 1924 Lahore 734 at Page 737 (C2) & Page 738 (C1); Shapurji Sorabji & Anr. vs Emperor: AIR***

1936 Bombay 154 at Page 157 (C1) and Page 158 (C1); Ramchandra Rango vs Emperor: AIR 1939 Bombay 129; also See Keshavlal vs Emperor: AIR (31) 1944 Bombay 306 at 311; Rajendra B. Chaudhary vs State of Maharashtra & Anr.: AIR (2007) NOC 418.

8.1 I am also of the view that Section 220 of the Cr.P.C. is only an enabling provision. If the Court were to hold separate trials, it would not result in any illegality. As a matter of fact, the Court unless it is very clear as to whether the offences would fall within the ambit of the provisions mentioned hereinabove, it should not take undue risk of holding a joint trial keeping in mind the interest of the accused. ***See T.B. Mukherjee vs State: AIR 1954 All 501 at Page 503 (Paragraph 3).***

8.2 Since I have come to the conclusion that the provisions of Sections 219 and 220 are not applicable to the case of the petitioners, though for different reasons, the submission of the learned counsel that, the learned CMM had failed to exercise his jurisdiction and has caused prejudice to the petitioners need not detain me. Suffice it to say, that there will be no disclosure of defence when the witness is examined, as he shall, as is evident, be cross-examined with respect to separate purchase transactions.

8.3 To be noted in the petition, the petitioners have deliberately maintained an eloquent silence with respect to the details of the purchase transactions except to mention that cheques were issued with respect to the purchases made by the petitioners from respondent no.2 from time to time.

8.4 The submission with respect to the provisions of Section 71 of the IPC and Section 31 of Cr.P.C. is a red herring. Section 31 of the Cr.P.C. enjoins upon the Court to pronounce separate sentences in respect of each of the offences for which the accused is found guilty. While Section 71 of the IPC provides that where an offence is made out in parts and if each part in itself is an offence then the offender cannot be punished with the punishment of more than one of such offences unless it is so expressly provided. The purpose is that the offender should be punished for an offence as a whole and not repetitively for each part which may form separate offences. Section 71 of the IPC has no applicability as each purchase transaction being separate and complete in itself they cannot be said to be parts of an offence. In any event this is an issue which shall come to fore at the stage of awarding punishment, if any. Sub-section (5) of Section 220 makes this clear by providing that nothing contained in the said Section shall affect Section 71 of the IPC. It is to be noted that all seven cases in the instant case are before the same Judge.

8.5 It is important to note that the learned counsel had made no submissions with respect to the said provisions in the Court below. As a matter of fact, there is no averment or ground with respect to same articulated in the petition. An oral submission has been made for the first time in this Court. I may also add that the perusal of the judgments cited by the learned counsel for the petitioners would show that they have no relevance to the facts obtaining in the present case.

9. As regards the submission of the learned counsel for the petitioners in respect of an error committed by the learned CMM in not allowing their application for examining the complainant in person on oath is concerned, the same is no longer *res integra* in view of a judgment of this Court in ***Radhey Shyam Garg vs Naresh Kumar Gupta*** passed in ***Crl.M.C.No 1522/2008*** dated ***09.05.2008***. This judgment is affirmed by the Supreme Court, as noticed hereinabove, by its judgment dated 05.05.2009 passed in Crl. Appeal No. 912/2009 entitled ***Radhey Shyam Garg vs Naresh Kumar Gupta***. The observations of the Supreme Court with respect to the point in issue are contained in Paragraphs 15, 16 and 17 of the judgment. Being relevant the same are extracted hereinbelow:-

“15. If affidavit in terms of the provisions of Section 145 of the Act is to be considered to be an evidence, it is difficult to comprehend as to why the court will ask the deponent of the said affidavit to examine himself with regard to the contents thereof once over again. He may be cross-examined and upon completion of his evidence, he may be re-examined. Thus, the words "examine any person giving evidence on affidavit as to the facts contained therein, in the event, the deponent is summoned by the court in terms of sub-section (2) of Section 145 of the Act", in our opinion, would mean for the purpose of cross-examination. The provision seeks to attend a salutary purpose.

The statements of objects and reasons for enacting the said provision, inter alia read, inter alia, as under :

"Keeping in view of the recommendations of the Standing Committee on Finance and other representations, it has been decided to bring out, inter alia, the following amendments in the Negotiable Instruments Act, 1881, namely:--

(i) to (iii) ...

(iv) to prescribe procedure for dispensing with preliminary evidence of the complainant;

(v) ...

(vi) *to provide for summary trial of the cases under the*

Act with a view to speeding up disposal of cases;"

16. The object of enactment of the said provision is for the purpose of expedition of the trial. A criminal trial even otherwise is required to be expeditiously held.

17. We, therefore, do not find any justification for arriving at a finding that a witness can again be summoned for his examination in chief in the court despite affirming affidavit in that behalf."

10. The last issue raised by the learned counsel for the petitioners pertains to imposition of costs. It is important to note here that during the course of hearing I had ascertained from the learned counsel for the petitioners as to whether the Vakalatnama on record before the Court below, authorised the Advocates who had appeared before the Court on 03.10.2008 to act and plead on behalf of the accused or, was it only confined to him personally. He has admitted that the Vakalatnama not only authorised him but also the Advocates who had appeared on 03.10.2008 in the Court below. Therefore, the submission of the Advocates before the Court below on 03.10.2008 that they were merely proxy counsels for Shri Vijay Aggarwal, Advocate was inaccurate to say the least. They were authorised to argue the matter which they failed to do, despite a request made by the Court. In any event, as rightly submitted by Sh V K Kalra, the learned counsel for respondent no.2, the Court did not dismiss the application for non-prosecution, on the other hand, discussed the matter on merits, and rejected the applications only thereafter. In the petition the reasons given by the learned counsel for the petitioners that his inability to appear on 03.10.2008 in the Court below was on account of the

Crl. M.C. 3773/2009 Page 18 of 21

fact that he was busy in another matter listed in this Court, in my view was neither here nor there. This is particularly so in the instant case, as the client had consciously authorised more than one person to appear before the Court below. When law firms take up several matters and have several resources at hand, it cannot be expected that matters listed in Court will not proceed because a particular advocate is not available. It is expected that a conscious attempt is made to arrange ones professional work in a fashion that neither the Court nor the opposing party is inconvenienced. I would have taken a more benign view of the learned counsel's non-appearance if the record inspired confidence that this was not ruse to delay the proceedings. The following observations of the learned CMM made in the impugned order specifically highlight this aspect:-

"It appears that the sole objective of accused behind moving this application is to somehow delay the trial of the case, because in this case evidence by way of affidavit was so placed on record by the complainant on 04.12.2006, and it is almost 2 years from then and till date the present application has not been filed by ld. CI for accused. Application is therefore devoid of any merits, same is dismissed accordingly with an exemplary cost of Rs 5000.

Lastly I will take up application moved by accused seeking his exemption from personal appearance on the ground of his illness. The medical certificate attached with the said application is of some "Prayag Hospital", situated at Noida, U.P. Original certificate not produced for the perusal of this Court. A bare perusal of the medical certificate reveals a lot of discrepancies in it. Neither it bears the registration number of the said hospital nor even name of the doctor or his enrollment number has been mentioned in the certificate. There is only a seal of hospital affixed on it.

As per rules of Medical Council of India, each and every doctor should ensure that any medical certificate issued by him must disclose his name as

well his enrollment number on all the communications made by him. Hence, prima facie I have a grave suspicion about the authenticity and genuineness of this medical certificate itself. Further perusal of record reveals that accused is habitual of seeking frequent exemptions on one pretext or the other and it is always difficult to secure his presence so as to ensure the smooth progress in the trial of the case which is contrary to the mandate given by Hon'ble Supreme Court as well as our own Hon'ble High Court who have time and again cautioned the subordinate judiciary to dispose of the cases under Section 138 N.I. Act as expeditiously as possible. Therefore, I do not find any merits in this application, same is dismissed accordingly."

10.1 The matter, however, does not end here for the reason that the learned counsel has submitted that there is no provision empowering imposition of costs by the Magistrate. On this account Mr Vijay Aggarwal, learned counsel for the petitioners is right that there is no provision in the Cr.P.C. for imposition of costs. The impugned order is set aside to that limited extent. This, however, in my opinion, does not emasculated the High Court's power to impose costs where ends of justice so demand [See ***Mary Angel and Ors. vs State of T.N.: (1999) 5 SCC 209 at Pages 213, 216 to 217 and 222 (Paragraphs 8, 12 & 22 respectively)***]. After taking into account the conduct of the petitioners it would be a travesty of justice if no cost is imposed. The petitioners have lost on substantive issues. Even in this Court submissions were advanced on the issue of interpretation of Section 145 (2) of the N.I. Act, when it was known to the learned counsel that not only the issue stood decided by this Court but that it was also affirmed by the Supreme Court. The latter part, that is, the affirmation of the judgment of this Court by the Supreme Court was brought to my notice by Mr Kalra. To be noted that the

CrI. M.C. 3773/2009 Page 20 of 21

learned counsel appeared before the single Judge and on his own admission was involved with the proceedings in the Supreme Court. Despite which, the judgment of the Supreme Court was not placed on record on a specious plea that it was not available on the internet. A little effort would have demonstrated otherwise as the judgment could be obtained by visiting the official site of the Supreme Court, i.e., *www.supremecourtfindia.nic.in* on the same day. In all this precious Court time was lost. It is in these circumstances, I feel constrained to impose a cost of Rs 10,000/- in respect of each of the petitions. The cost shall be paid to the complainant.

11. Consequently, the impugned orders are sustained save and except to the extent as indicated in paragraph 10.1 above. Accordingly, these petitions are disposed of.

RAJIV SHAKDHER, J.

July 15, 2009
kk/mb