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% 20.09.2010

Present: Mr. V.K. Shailendra for the petitioner.

| **CRL. REV.P. Nos. 584/2010 & 586/2010**
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1. These revision petitions are directed against the order dated 18th May, 2010 refusing to take cognizance and summon the accused in complaints filed under Section 138 of the Negotiable Instrument Act, 1881 (Act, for short). By the impugned order dated 18th May, 2010, the learned trial court has dismissed the complaints, inter alia, holding that no proof of delivery of notice under Section 138(b) of the Act has been placed on record.

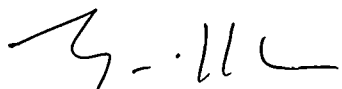
2. Learned counsel for the petitioner submits that the petitioner had filed postal receipts issued by post office for sending notices under Section 138 proviso clause (b) of the Act. He relies upon the several judgments of the Supreme Court including *V.Raja Kumari Vs. P.Subbarama Naidu and Another*, (2004) 8 SCC 774 and *D.Vinod Shivappa Vs. Nanda Belliappa*, (2006) 6 SCC 456. He relies upon the Evidence Act and the General clauses Act. My attention is drawn to the order dated 3rd May, 2010, which records that arguments were heard on the point of territorial jurisdiction and the case was adjourned for orders on 15th May, 2010. On 15th May, 2010, orders were not passed and the case was adjourned to 18th May, 2010. As noticed above, the impugned order was passed on 18th May, 2010. In the impugned order, it was noticed and observed by the trial court that the question of territorial jurisdiction was not being examined in view of the fact that the complaint was being dismissed on the ground that there was no proof of delivery/service of notice issued under Section 138 proviso clause (b) of the Act.

3. In view of the aforesaid position, the impugned order dated 18th

May, 2010 is hereby set ^{aside} and the matter is remanded back to the learned trial court for fresh hearing. Petitioner will be entitled to rely upon judgments cited before me before the trial court. It is clarified that this Court has not expressed any opinion on merits and the trial court will pass an order without being influenced with the observations made in this order.

4. The petitioner will appear before the trial court on 4th October, 2010.

The petitions are accordingly disposed of.


SANJIV KHANNA, J.

SEPTEMBER 20, 2010
VKR