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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Criminal M.C. No.3687 of 2009 & C.M. Appl. No.12526 of 2009

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02.08.2010

M/S. KALUCHA PAPER HOUSE & ANR. Petitioners

Through: Mr. Mukesh Ranjan, Advocate.

Versus

M/S. MAHAVIR PAPERS & ANR. Respondents

Through: None.

Reserved on: 26th July, 2010

Pronounced on: 2nd August, 2010

JUSTICE SHIV NARAYAN DHINGRA

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

J U D G M E N T

1. The present petition has been preferred against an order dated 17th September, 2009 passed by the learned Additional Sessions Judge allowing a revision of the respondent against order dated 25th April, 2009 passed by learned ACMM. The contention of the petitioners is that dismissal of the complaint after summoning of the accused amounted to acquittal of the accused and only an appeal would lie under Section 378 Cr.P.C. The petitioner have relied upon *Kalpna Tyagi vs. Sneh Lata Sharma; 2003 (2) DCR 96* and *Kishan Kumar Gupta vs. Mohammed Jaros & Anr.; 2003 (1) RCR 127*.

2. Both the above cited cases relied upon by the petitioners are of the period when amendment to Negotiable Instruments Act had not been made and the cases under Negotiable Instruments Act were summon trial cases. However, after the amendment in Negotiable Instruments Act, the cases under Negotiable Instruments Act are summary trial cases and in view of the judgment of this court passed in *Criminal M.C. No.1996 of*

2010 titled *Rajesh Aggarwal Vs. State & Anr.* dated 28th July, 2010, the procedure being followed by learned Metropolitan Magistrate in this case was not a correct procedure. The witnesses of the complainant could not have been recalled unless the petitioner had made an application under Section 145 (2) of Negotiable Instruments Act and had taken a specific plea why he was not liable to pay the cheque amount. The procedure being following by the learned trial court of repeatedly fixing the complaint case again for evidence was, therefore, faulty and not in accordance with provisions of summary trial as given in Criminal Procedure Code and Negotiable Instruments Act.

3. I consider that the trial under Section 138 of Negotiable Instruments Act is mandatorily to be proceeded in a summary manner and it is the accused who has to disclose his defence and make an application before the trial court as to why he wants to recall the complainant or other witnesses for cross-examination. The evidence adduced before summoning has to be considered sufficient during trial and unless an application is made under Section 145 (2) of the Negotiable Instruments Act, there is no provision for re-examining complainant witnesses. I, therefore, consider that this case is required to be sent back for trial according to law as laid down by this court in *Rajesh Aggarwal's* case (*supra*).

4. I, therefore, do not interfere with the order of the learned Sessions Judge on the ground as taken by the petitioners.

5. The petition is hereby dismissed.

SHIV NARAYAN DHINGRA
[JUDGE]

AUGUST 02, 2010
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