24 to 36
% 01.8.2011

Present: Mr. Sanjay Gupta, Adv. for the petitioner.
Mr. Yudhishtar Kahol, APP for the State.

+ CRL.M.C. Nos. 2409/2011, 2410/2011, 2411/2011, 2412/2011, 2413/2011, 2414/2011, 2415/2011, 2416/2011, 2417/2011, 2418/2011, 2420/2011, 2421/2011, 2422/2011 and 2424/2011

For detailed order see Crl. M. (C) No. 2409/2011.

V.K. SHALI, J.

AUGUST 01, 2011
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Crl. M. C. No.2409/2011**

Date of Decision : 01 .08.2011

ORG INFORMATICS LTD. ..... **Petitioner**
Through: Mr. Sanjay Gupta, Adv.

Versus

STATE & ANR. ..... **Respondents**
Through: Mr. Yudhishtar Kahol, APP

CORAM :
HON'BLE MR. JUSTICE V.K. SHALI

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

V.K. SHALI, J. (oral)

1. This is a criminal misc. main petitions filed under Section 482 Cr.P.C. for setting aside the order dated 30.09.2010 and 12.01.2011 passed by the learned Metropolitan Magistrate in complaint case no. 812/2010 and the order dated 18.05.2011 passed by the learned Additional Sessions Judge in criminal revision petition no. 34/2011.

2. It may be pertinent here to mention that criminal misc. main cases bearing no. 2410 to 2422 are also between the same parties challenging the said three orders except the fact that they are passed in different complaint cases. This case will be treated as a lead case giving the reasons for the dismissal of the petition which would be equally applicable to the other petitions.

3. The brief facts of the case are that the respondent no. 2/IBM India Pvt. Ltd. filed a complaint under Section 138 of the Negotiable Instrument Act against the present petitioner, ORG Informatics Ltd. and its three Directors, namely, Ajoy Khandheria, Rajesh Suri and Sushil Kumar who are the petitioner nos. 2 to 4. The petitioner no.1/company had allegedly issued cheque for a sum of Rs.25,00,000/- to the respondent no. 2 which was dishonoured on presentation. It was also alleged that the petitioner nos. 2 to 4 were the directors of petitioner no. 1/company and were responsible for the conduct of the business of the petitioner company, and therefore, vicariously liable for the commission of the offence. The

respondent no. 2 complied with the statutory provisions of the issuance of demand notice etc. The same is alleged to have not been complied with by the petitioners, accordingly, the aforesaid complaint was filed against the present petitioners by the respondent no.2. Along with the complaint an affidavit was filed by way of pre summoning evidence and the learned Magistrate issued notice to the present petitioners. On appearance, notice under Section 251 Cr.P.C was given to them through their counsel on 08.04.2010 and thereafter the matter was adjourned to 12.05.2010 for prosecution evidence.

4. On 12.05.2010 the Presiding Officer was on leave and the matter was adjourned to 08.07.2010. On 08.07.2010, the respondent no. 2 made a statement that the affidavit by way of evidence filed by it at the pre summoning stage may be treated as post summoning evidence also. The matter was adjourned for mediation which did not yield any result. Thereafter the matter was adjourned to 23.09.2010 for the purpose of cross examination of the respondent nos.2's witnesses. On 30.09.2010, the case was

transferred to Ms. Surbhi Sharma Vats. The learned Magistrate who noted that in view of the directions passed by the High Court of Delhi in the judgment titled **Rajesh Agarwal Vs. State & Anr.** 171 (2010) DLT 51, Crl. Misc. No. 1996/2010, the matter shall be proceeded as summary trial. Accordingly, the matter was adjourned to 12.01.2011 for the defence evidence.

5. On 12.01.2011, the learned Metropolitan Magistrate noted that a perusal of the record show that the complainants evidence has not yet been started and on account of an inadvertent mistake the matter was adjourned for defence evidence. It was observed that in terms of the judgment of this Court in **Rajesh Agarwal (Supra)** read with section 143 of the Negotiable Instrument Act and Section 263(g) Cr.P.C. the defence of the accused has to be recorded, and accordingly, the matter was adjourned to 17.03.2011.

6. The petitioners feeling aggrieved by the orders dated 30.09.2010 and 12.01.2011 filed a revision petition before the Sessions Court which was dismissed.

7. The contention of the learned counsel for the petitioners before the revisionist court was two-fold, which was sought to be raised before this Court also.

8. The first contention raised before the learned Additional Sessions Judge was that even after having proceeded to record the evidence of the respondent/complainant after framing the notice shows the clear intention of the learned Metropolitan Magistrate that he was to follow the procedure prescribed for summon trial offence under Section 251 to 259 Cr.P.C. and having done so the Magistrate could not have reviewed his own order by passing the impugned order dated 30.09.2010 and 12.01.2011 observing that the case shall be proceeded as summary trial. It was contended by the learned counsel for the petitioners that in terms of the judgment of the Apex Court in **Adalat Prasad Vs. Rooplal Jindal & Ors.** (2007) 7 SCC 338, the learned Magistrate could not have reviewed his own order.

9. The second submission of the learned counsel for the petitioners is that by the impugned order, the learned

Magistrate has directed the complainant to file his statement of defence. It was contended that even though it was assumed that the Magistrate has to follow the summary trial procedure in terms of the **Rajesh Agarwal case (Supra),** the same could not be followed retrospectively as the learned Magistrate had already proceeded to deal with the case by following the procedure of a summons trial case. Both these pleas were negated by the learned Additional Sessions Judge by a detailed order and it was observed by him that no prejudice was to be caused to the rights of the present petitioners by following the directions given by the High Court of Delhi in **Rajesh Agarwal case (supra)** and that the petitioners were at liberty to file a case under Section 145(2) of the Negotiable Instrument Act for seeking the recall of the witnesses for the purpose of examination of their plea of defence. The petitioners have preferred the present petition by invoking Section 482 Cr.P.C. as they were still not satisfied.

10. I have heard the learned counsel for the petitioners and have also gone through the two judgments that were relied upon by the petitioners in respect of his submissions which were made by him before the Sessions Court. I have also gone through the impugned orders.

11. At the outset, it may be pertinent here to mention that although Section 482 Cr.P.C. starts with a non obstante clause and reiterates powers of the High Court to pass any order to prevent the abuse of process of law or to pass any such order to secure the ends of justice, is not conditioned or curtailed by any provision but still Court has the discretion to see whether the invocation of Section 482 Cr.P.C. is justified or not. It means that even if a party has preferred a revision petition under Section 397 Cr.P.C., he can still prefer a petition under Section 482 Cr.P.C. if the ingredients for the application of Section 482 Cr.P.C. are satisfied, namely, the fact that the situation is such which would warrant the interference by the High Court for the purpose of preventing the abuse of processes of law or to secure the ends of justice. In the instant case, I do

not find that there is any possibility of interference by the High Court as there is no abuse of processes of law nor does any order require to be passed that is contrary to the one which has been passed by the Sessions Court which directed the petitioners to seek a recall of witnesses under Section 145 (2) of the Negotiable Instrument Act for the purpose of establishing his defence. It may also be pertinent here to mention that Section 397 sub clause 3 of Cr.P.C. prohibits a party from filing a second revision petition. The present petitioners have already chosen to file a petition before the Sessions Court and having done so, they are prohibited from filing a second revision petition even though it has been termed as a petition under section 482 Cr.P.C. Having said so, a perusal of the provisions under Section 143 read with Section 145 of the Negotiable Instrument Act would make it amply clear that the concern of the legislature, while incorporating Section 143 and 145 by way of amendment w.ef. 06.02.2003, was essentially to curtail the delay which was occurring in the disposal of these complaints under Section 138 of the Negotiable

Instrument Act. The mandate of the law was that the case should be tried summarily as far as possible and further, the trial should be conducted on day to day basis and preferably be disposed of within a period of six months. In the instant case, the entire effort of the petitioners seems to be to scuttle the trial and indulge in dilatory tactics. The petitioners had already brought the matter before the High Court earlier in the first round and when, it was disposed of by Hon'ble Mr. Justice A. K. Pathak on 29.09.2010. In the present case also the learned Additional Sessions Judge has specifically observed that no prejudice is likely to be caused to the petitioners in the, the trial proceeds according to summary procedure and the only thing that is to be done by the present petitioner is to file their statement of defence and then seek a recall of the complainant/respondent witness for the purpose of cross-examination as the complainant has already made a statement that the evidence which has been filed by way of affidavit at the stage of pre summoning may also be treated as evidence at the stage of post summoning and therefore,

in my considered view the only purpose of filing the present petition is to indulge in dilatory tactics, which cannot be permitted by the Court. The plea that the learned Trial Court has reviewed its own order or that the judgment title **Rajesh Agarwal case (Supra)** has been applied retrospectively have already been dealt with by the Sessions Court. I feel that it need not be gone into afresh by this Court.

12. For the reasons mentioned above, I do not find any merit in the petition and accordingly, all the present petitions are accordingly dismissed.

13. Dasti.

V.K. SHALI, J.

August 01, 2011
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