

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

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Crl. M.C. N0. 753/2011

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Date of Decision: 9th November, 2012

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RAKESH SHARMA

....Petitioner

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Through: Mr. Arun Mahajan, Advocate

Versus

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STATE(NCT OF DELHI) & ANR.

...Respondents

**Through: Mr. M.N. Dudeja, APP for R-1
None for R-2(complainant)**

CORAM:

HON'BLE MR. JUSTICE P.K.BHASIN

ORDER

P.K.BHASIN, J:

The petitioner-accused feeling aggrieved by the order dated 7th December, 2010 of the learned Metropolitan Magistrate whereby the petitioner's application for returning the criminal complaint filed against him by the respondent no.2 herein under Section 138 of the Negotiable Instruments Act, 1881('the Act of 1881' in short) because of lack of territorial jurisdiction to entertain the same was dismissed

filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of that complaint.

2. The brief facts of the case are that the learned Magistrate after taking cognizance of the offence under Section 138 of the Act of 1881 summoned the petitioner to appear in Court as an accused in the complaint case and on receipt of the summons the petitioner-accused moved an application claiming therein that Delhi Courts had no territorial jurisdiction in the matter. However, that application was dismissed vide order dated 7th December, 2010 by the learned Magistrate without going into the merits of the objection regarding jurisdiction of Delhi Courts by observing that “.....this Court has no inherent power to recall or review its orders. Hence, the aforesaid application is not maintainable and the same is dismissed”. For taking this view the trial Court relied upon the decision of the Supreme Court in Adalat Prasad’s case reported as (2004) 7 SCC 338 and one decision of this Court reported as 160(2009) DLT 379.

3. The petitioner-accused then approached this Court. Respondent no.2- complainant appeared in the matter and filed its reply but its counsel did not appear in the matter on the date of hearing. So, the counsel for the petitioner was heard since the State had been impleaded only as a pro-forma party.

4. Though in this petition the prayer made was for quashing of the complaint by this Court in view of the helplessness expressed by the trial Court because of the judgment of the Supreme Court in Adalat Prasad's case but during the course of hearing of this petition the learned counsel for the petitioner-accused had submitted that all that he was now praying to this Court was to direct the trial Court to take some decision on merits in respect of the objection about the territorial jurisdiction raised by the petitioner. Learned counsel also submitted that this objection could be decided and allowed on the basis of averments made in the complaint itself and if the matter is remanded back the petitioner shall not rely on any other material or evidence except the averments in the complaint to satisfy the trial Court that Delhi Courts have no territorial jurisdiction in the matter and further that the view taken by the learned Magistrate while dismissing the petitioner's application is not the correct view in law since the petitioner was not asking for re-calling any earlier order of the trial Court.

5. In the opinion of this Court also the learned Magistrate's view that the application moved by the petitioner was not maintainable is not the correct view in law and so cannot be sustained. In the impugned order the learned Magistrate has not even stated as to which order he would be recalling or reviewing in the event of his

agreeing with the accused that Delhi Courts have no territorial jurisdiction to entertain the complaint of respondent no.2-complainant. And as far as the judgments relied upon by the Magistrate in the impugned order are concerned, it has no doubt been held in those judgments that a criminal court cannot review its orders but it has not been held that once cognizance is taken and accused is summoned and an objection regarding territorial jurisdiction is raised by the accused the same cannot be entertained by the Court. Therefore, relying upon those judgments the petitioner's application could not be rejected as being not maintainable. Some decision, one way or the other, should have been taken by the learned Metropolitan Magistrate.

6. The impugned order holding the petitioner's application for returning the complaint to the complainant for lack of territorial jurisdiction with the Delhi Courts to be not maintainable is, therefore, liable to be set aside and is accordingly set aside. The trial Court is directed to dispose of that application on merits. However, the same shall be disposed of only on the basis of the averments made in the complaint after giving fresh hearing to both the sides and keeping in mind the fact that this Court has not at all gone into the merits of the objection taken by the petitioner-accused regarding lack of territorial jurisdiction of the Courts in Delhi to entertain the complaint of

respondent no.2 herein and the trial Court shall be at liberty to take any decision in accordance with law.

P.K.BHASIN, J

NOVEMBER 9, 2012