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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ TR.P.(CRL.) 21/2013

RAJESH BERI

..... Petitioner

Through: Mr. Aman Lekhi, Senior Advocate,
with Mr. Vijay Kumar Gupta,
Advocate

versus

GENESIS EDUCATION FOUNDATION

..... Respondent

Through: Mr. Dayan Krishnan &
Mr. Gautam Narayan, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

17.05.2013

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Crl.M.A. No.8032/2013 (u/S 482 Cr.P.C.)

Allowed subject to all just exceptions.

Crl.M.A. No.8033/2013 (u/S 482 Cr.P.C.)

For reasons stated in the application, it is allowed and delay of two days' in re-filing the accompanying application is condoned.

TR.P.(CRL.) 21/2013 & Crl.M.A. No.8031/2013 (u/S 407 r/w Sec. 482 Cr.P.C.)

The criminal complaint (*Annexure P-1*) for the offence under Section 138 of *The Negotiable Instruments Act, 1881* was instituted more than seven years ago. This enactment was brought in for speedy resolution of the disputes pertaining to dishonoring of cheques. The

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legislature in its wisdom had stipulated that the proceedings under *The Negotiable Instruments Act, 1881* should be concluded within a period of six months by conducting a summary trial. The very purpose of bringing this enactment seems to be defeated, as matters under this enactment are pending for years together. This is evident from the instant case, as the criminal complaint (*Annexure P-1*) for the offence under Section 138 of *The Negotiable Instruments Act, 1881* pertaining to dishonouring of cheque of ₹6,75,000/- is still pending.

Without going into the aspect as to whether the delay in disposal of the criminal complaint (*Annexure-P-1*) is attributable to petitioner or not, what emerges is that at the stage of final arguments in the complaint (*Annexure P-1*), petitioner had filed an application under Section 340 of the Cr.P.C. and according to learned counsel for respondent upon full-fledged hearing of the entire matter, the said application was disposed of in the first instance upon insistence of petitioner's counsel. However, as per learned senior counsel for petitioner, trial court had pronounced the order on petitioner's application under Section 340 Cr.P.C. and thereafter, had called upon petitioner's counsel to argue the main case on the same very day at about 5:00 p.m.. Infact, the trial court was under the impression that lengthy arguments have already been addressed. It is so evident from the Comments (*Annexure P-6*) furnished by trial judge in the transfer petition before the learned Additional Chief Metropolitan Magistrate. But petitioner's counsel before the trial court had sought time to argue the main case and the matter was adjourned to the next date of hearing.

During the course of hearing, it is pointed out by learned senior

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counsel for petitioner that from the Comments (*Annexure P-6*) submitted by the Trial Judge to the Additional Chief Metropolitan Magistrate, it is evident that the trial court is biased against petitioner and is pre-determined to convict petitioner in this case. Attention of this Court was drawn to the following passage of the Comments (*Anenxure P-6*):-

"This Court has also granted full opportunity to the accused at every step of the case but the moment accused realized that an adverse judgment may be passed against him, he has preferred the present application in order to sullify the solemn proceeding and sanctity of the judicial proceedings."

• Petitioner had filed an application for transfer of this complaint case to another court before, learned District and Sessions Judge, at District Courts Saket, New Delhi which was declined vide order of 9th April, 2013 by observing as under:-

"There is nothing on record to indicate that the Ld. Magistrate has pre-judged the issues which need to be addressed for final adjudication upon the criminal complaint which is now ripe for judgment after final arguments are addressed on both sides. The learned Magistrate has not shown any undue hurry in concluding the proceedings. On the contrary, he has been more than necessarily indulgent in granting adjournments. It may be that after having heard arguments for more than a couple of hours on 17.12.2012, the Ld. Magistrate gathered an impression that even the final submissions had been covered by the applicant. But then, given the request made for further opportunity, he granted the same by adjourning it to the next date for such purposes. It's not

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fair to read partisan state of mind of the Magistrate into the order only because the matter was adjourned to the very next date. The arguments have been substantially advanced, the Magistrate was correct in his approach by taking up the case on day to day basis".

To assail the aforesaid finding in the impugned order, learned senior counsel for petitioner had drawn the attention of this Court to the trial court order of 6th May, 2013 (*Annexure-3*) to point out that on the said date, the trial court had refused to adjourn the matter to a short date, even though senior counsel for petitioner was not available and had observed that the orders would be pronounced on 21st May, 2013 but when the copy of order of 6th May, 2013 was obtained, it was revealed that the matter is now listed before the trial court on 21st May, 2013 for final arguments. An interpolation in the order of 6th May, 2013 is alleged, as learned counsel for respondent present in the Court conceded that infact on 6th May, 2013, the matter was reserved for orders to be pronounced on 21st May, 2013 with liberty to the petitioner/accused to file written submissions.

At this stage, learned counsel for respondent asserted that petitioner/accused has been successful in delaying the proceedings arising out of the complaint in question for more than seven years and infact, application under Section 340 of the Cr.P.C. was deliberately and belatedly filed with the sole motive to obstruct conclusion of the proceedings and insistence by petitioner's counsel for separate decision on this application was also for this reason.

After having heard both the sides and on scrutiny of the impugned

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order, this Court is of the considered view that it is the prerogative of the trial court to decide application under Section 340 of the Cr.P.C. after hearing arguments in the main case as well and normally it is done so. Even if a party insists that application under Section 340 Cr.P.C. be decided first, trial court is not obliged to do so, as it is common knowledge that in proceedings under Section 138 of *The Negotiable Instruments Act, 1881*, every ploy is used by accused to delay the proceedings.

The Apex Court in *Jahid Shaikh Vs. State of Gujrat* (2011) 7 SCC 762 has reiterated that *in order to ensure free and fair trial, the atmosphere in which the case is tried should be conducive to the holding of a fair trial*. The Apex Court had further observed that *the golden thread which runs through all the decisions cited on behalf of the parties, is that justice must not only be done, but must also be seen to be done*.

In view of afore-noted dictum of the Apex Court in *Jahid Shaikh (Supra)*, learned counsel for respondent fairly submits that there is no objection if this matter is heard by the predecessor trial judge, who had already heard this matter for few months.

In the light of above-said stand taken by respondent's counsel, without commenting upon the impartiality of the learned trial judge and legality of the impugned order, this case is transferred to the predecessor trial judge- Mr. Anuj Aggarwal, whose name has been disclosed at the hearing, and a time bound direction for early decision of the complaint case in question is also issued.

Accordingly, this petition is disposed of with direction to the parties to appear in CC No. 819/1/10, *Genesis Educational Foundation*

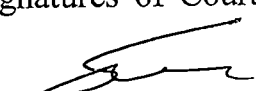
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Vs. Rajesh Beri, before Shri Anuj Aggarwal, Metropolitan Magistrate, in District Courts Saket, New Delhi on 21st May, 2013, who shall give solitary effective opportunity of hearing to petitioner to enable his counsel to address the arguments within a period of ten days from the date fixed i.e. from 21st May, 2013, with liberty to both sides to place on record their short written synopsis (not more than 10-12 pages). It is expected that the decision in the criminal complaint in question would be rendered by the trial court within a month of conclusion of hearing in the complaint case.

With aforesaid directions, this petition and the application is disposed of.

Shri Anuj Aggarwal, Metropolitan Magistrate, in District Courts Saket, New Delhi be apprised of this order forthwith.

Copy of this order be given *dasti* under the signatures of Court Master to counsel representing the both sides.


(SUNIL GAUR)
JUDGE

MAY 17, 2013

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