

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

Reserved on: 15th September, 2014

Date of Decision: 29th September, 2014

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+ CRL. M.C. 410/2012

RAINEE SINGH

..... Petitioner

Through: Mr. M. Sood and Mr. M. Singh,
Advocates.

versus

STATE & ANR.

.....Respondents

Through: Mr. D. Hasija and Ms. S.B. Sakia,
Advocates.

+ CRL. M.C. 411/2012

RAINEE SINGH

..... Petitioner

Through: Mr. M. Sood and Mr. M. Singh,
Advocates.

versus

STATE & ANR.

.....Respondents

Through: Mr. D. Hasija and Ms. S.B. Sakia,
Advocates.

+ CRL. M.C. 1076/2012

SARVJIT SINGH

..... Petitioner

Through: Mr. M. Sood and Mr. M. Singh,
Advocates.

versus

STATE & ANR.

.....Respondents

Through: Mr. D. Hasija and Ms. S.B. Sakia,
Advocates.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. These are three petitions filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter after referred to as 'Cr.P.C.') read with Article 227 of Constitution of India impugning the order dated 12.10.2010 passed by learned Metropolitan Magistrate, New Delhi.

2. Since all these three petitions have arisen out of order dated 12.10.2007 and the question involved in all the petitions are similar, therefore, all the petitions are being disposed of together by this common order.

3. The concise facts giving rise to the present petitions are that respondent No.2 had filed a complaint under Section 138 of Negotiable Instruments Act, 1881 (for short, 'NI Act') in respect of dishonour of cheques in each complaint case. Despite service of notice, petitioners had failed to make the payment of cheques. Thus, respondent No.2 had filed a complaint for the offence punishable under Sections 138/142 of NI Act against the petitioners. Vide impugned order dated 12.10.2010, learned trial court took cognizance and summoned the petitioners. Feeling aggrieved by the said order, the petitioners have preferred the present petitions.

4. Learned counsel for the petitioners contended that according to the complainant, the petitioners had availed friendly loan against which

cheques were issued by way of security in favour of the complainant. He also submitted that the cheques in question were issued in discharge of any legally enforceable debt or other liability and, therefore, the provisions of Section 138 of NI Act are not attracted. The other submission of learned counsel for the petitioners are that the notice of demand sent by respondent No.2 before filing the complaint was not sent at the correct addresses. The notices were alleged to have been sent by courier and in the absence of delivery receipts showing services of notice upon the petitioners, the complaint is not maintainable.

5. Per contra, learned counsel for respondent No.2/ complainant urged that the petitioners obtained friendly loan from respondent No.2/ complainant and issued the cheques towards repayment of said loan. The said cheques were dishonoured and the respondent/ complainant sent notice of demand to the correct address of the petitioners and the petitioners had received the said notices but failed to make the payment of amount of cheques in question.

6. I have given my thoughtful consideration to the submissions made by learned counsel for the parties and perused the material on record.

7. After taking into account the imperative facts of the instant case, this Court is of the opinion that inherent powers of this Court under Section 482 of Cr.P.C. are not required to be invoked to quash the proceedings arising out of the complaints in question, in view of the judgment of Hon'ble Supreme Court of India in '**Bhushan Kumar & Anr v State of (NCT of Delhi) & Anr**' *II(2012)DLT(CRL.)139(SC)*,

wherein it was observed that: -

“8. Under Section 190 of the code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of inquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.

9. A summon is a process issued by a Court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in Court. A person who is summoned is legally bound to appear before the Court on the given date and time. Wilful disobedience is liable to be punished under Section 174, IPC. It is a ground for contempt of Court.

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20. It is inherent in Section 251 of the Code that when an accused appears before the trial court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial court to carefully go through the allegations made in the charge-sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether

he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code.”

8. In another case ‘**Constellation Enterprises Pvt. Ltd & Anr v. P.E.C. Limited**’ 2006(127)DLT 733, this Court is of the view that:

“...Whatever defences are being raised in this court should be raised before the trial court and this court under Section 482 of the Code of Criminal Procedure cannot examine the documentary and oral evidence which may have to be led before the trial court and which has to be tested by cross examination. It is established law that this court under Section 482 of the Code of Criminal Procedure can intervene only in circumstances where there is manifest injustice on the face of the record.”

9. Further in case ‘**Krishna Kumar Variar vs. Share Shoppe**’, (2010) 2 SCC 485, it was laid down:-

“4. In our opinion, in such cases where the accused or any other person raises an objection that the trial court has no jurisdiction in the matter, the said person should file an application before the trial court making this averment and giving the relevant facts. Whether a court has jurisdiction to try/entertain a case will, at least in part, depend upon the facts of the case. Hence, instead of rushing to the higher court against the summoning order, the person concerned should approach the trial court with a suitable application for this purpose and the trial court should after hearing both the sides and recording evidence, if necessary, decide the question of jurisdiction before proceeding further with the case.

5. For the reasons stated hereinabove, the impugned

judgment and order is set aside and the appeal is allowed. The appellant, if so advised, may approach the trial court with a suitable application in this connection and, if such an application is filed, the trial court shall after hearing both the sides and after recording evidence on the question on jurisdiction, shall decide the question of jurisdiction before further proceeding with the trial.”

10. It is a settled law that the trial court is not expected to function like Post Office and to mechanically frame notice but is bound by law to apply its mind to find out whether *prima facie* case is made out against the accused or not. Section 251 Cr.P.C. deals with the stage subsequent to issue of process under Section 204 Cr.P.C. in a summary trial case. This Section casts a duty upon the Magistrate to state to the accused person the particulars of offence allegedly committed by him and asking him whether he pleads guilty. This can be done by the Magistrate only if the complaint/preliminary evidence/charge-sheet recorded during enquiry disclose commission of a punishable offence. If the charge-sheet/complaint does not make out a triable offence, a Magistrate cannot state the particulars of non-existing offence for the accused is to be tried. Therefore, it is inherent in Section 251 Cr.P.C. that when an accused appears before the trial court pursuant to summons issued against under Section 204 Cr.P.C., the Magistrate is required to go through the charge-sheet/complaint and arrive at a conclusion whether or not commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty, otherwise, he is bound to discharge the accused.

11. Based on the aforesaid facts and the authoritative pronouncement of the Apex Court and in view of ground reality that this Court is being clogged by filing such petitions, it is the need of the hour to direct the petitioners to approach trial court so that such petitioners instead of straightway rushing to this Court ought to see dropping of proceedings by the trial court to ensure that summary trial in such like matters do not get unnecessarily delayed.

12. In view of the aforesaid observations, without entering into the merits of the case, the petitioners are relegated to trial court to urge all the pleas taken herein before learned trial court at the time of hearing arguments under Section 251 Cr.P.C. In case, the petitioners raise the pleas before the trial court, the trial court will consider the same in accordance with law. The petitions are, thus, disposed of.

13. Since the complaints were filed in the year 2007, the trial court is directed to expedite the trial.

14. Trial court record be sent back forthwith.

(VED PRAKASH VAISH)
JUDGE

SEPTEMBER 29th, 2014
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