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

Date of Decision: March 25, 2015

+ **CRL.M.C. 4105/2014 & Crl.M.As.14090/14, 14542/14**

TRIMURTI EXPORTS & ORS Petitioners
Through: Mr. Dayan Krishnan, Senior
Advocate, with Mr. Virender
Goswami, Ms. Soni Singh, Ms.
Swati Goswami and Mr. Shubham
Agarwal, Advocates

versus

MODELAMA EXPORTS LTD Respondent
Through: Mr. Rajat Wadhwa, Mr. Amritansh
Batheja, Mr. Milan Malhotra and
Mr. Kunal, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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Vide impugned order of 27th July, 2012, petitioner No.1 through its three partners has been summoned as accused in a complaint under Section 138 of *the Negotiable Instruments Act, 1881* filed by respondent-complainant. Vide order of 22nd April, 2013 petitioners' application for transfer of complaint case in question to the court of competent territorial jurisdiction stands rejected by trial court while observing that the question of jurisdiction was urged by petitioners before this Court, but they had

withdrawn the petition unconditionally.

Vide order of 27th August, 2013 petitioners' revision petition against order of 22nd April, 2013 stands dismissed. Vide order of 13th August, 2014 trial court has listed the complaint case in question alongwith three other similar complaint cases for evidence.

In this petition, quashing of afore-noted orders is sought while relying upon Apex Court's decision in *Dashrath Rupsingh Rathod v. State of Maharashtra* (2014) 9 SCC 129. However, at the hearing, learned senior counsel for petitioners had placed reliance upon Apex Court's decision in *J.V. Baharuni v. State of Gujarat*, (2014) 10 SCC 494 to seek *denovo* trial by raising the bar under Section 326 (3) of Cr.P.C.. It was vehemently asserted by learned senior counsel for petitioners that the complaint in question was tried as a summary case.

It was pointed out that the Magistrate, who had framed the Notice under Section 251 of Cr.P.C. has been transferred and the successor Magistrate cannot act upon and proceed with the summary trial and has to start the proceedings *denovo*. To assert so, attention of this Court was drawn by learned senior counsel for petitioners to an order of 5th February, 2014 in CRL.M.C.621/2014 titled *Modelama Exports Ltd. v. Trimurti Exports and Ors.* (Annexure P-10) whereby the cross-examination of respondent-complainant was confined to the plea of defence taken by petitioners at the time of recording of the statement under Section 251 of Cr.P.C.. Thus, it was submitted that in view of the dictum of the Apex Court in *J.V. Baharuni (supra)*, *denovo* trial has to take place and once it begins, then in view of the Apex Court's dictum in *Dashrath Rupsingh (supra)*, the complaint case in question has to be

returned back to respondent-complainant for refiling before the court of competent territorial jurisdiction within thirty days of said return.

Learned counsel for respondent-complainant seriously disputed that the summary trial proceedings have been undertaken in the complaint case in question. During the course of hearing, attention of this Court was drawn to trial court record to show that the chief-examination of respondent-complainant is a full-fledged one and it does not merely contain the substance of the evidence, but is a full-fledged chief-examination.

Regarding the curtailment of the cross-examination of respondent-complainant to the plea of defence taken by petitioners in Notice under Section 251 of Cr.P.C., it was submitted that since full-fledged chief-examination of respondent-complainant is already on record and respondent-complainant is still under cross-examination, so there can be a full-fledged cross-examination of respondent-complainant *de hors* order of 5th February, 2014 (*Annexure P-10*).

Regarding the mode of trial in cases under Section 138 of *the Negotiable Instruments Act, 1881*, the directions issued by Apex Court in *J.V. Baharuni (supra)* are recapitulated as under: -

“60. However, to summarise and answer the issues raised herein, the following directions are issued for the courts seized of with similar cases:

60.1. All the subordinate courts must make an endeavour to expedite the hearing of cases in a time-bound manner which in turn will restore the confidence of the common man in the justice-delivery system. When law expects something to be done within prescribed time-limit,

some efforts are required to be made to obey the mandate of law.

60.2. The learned Magistrate has the discretion under Section 143 of the NI Act either to follow a summary trial or summons trial. In case the Magistrate wants to conduct a summons trial, he should record the reasons after hearing the parties and proceed with the trial in the manner provided under the second proviso to Section 143 of the NI Act. Such reasons should necessarily be recorded by the trial court so that further litigation arraigning the mode of trial can be avoided.

60.3. The learned Judicial Magistrate should make all possible attempts to encourage compounding of offence at an early stage of litigation. In a prosecution under the Negotiable Instruments Act, the compensatory aspect of remedy must be given priority over the punitive aspect.

60.4. All the subordinate courts should follow the directives of the Supreme Court issued in several cases scrupulously for effective conduct of trials and speedy disposal of cases.

60.5. Remitting the matter for de novo trial should be exercised as a last resort and should be used sparingly when there is grave miscarriage of justice in the light of illegality, irregularity, incompetence or any other defect which cannot be cured at an appellate stage. The appellate court should be very cautious and exercise the discretion judiciously while remanding the matter for de novo trial.

60.6. While examining the nature of the trial conducted by the trial court for the purpose of determining whether it was summary trial or summons trial, the primary and predominant test to be adopted by the appellate court should be whether it was only the substance of the evidence that was recorded or whether the complete record of the

deposition of the witness in their chief-examination, cross-examination and re-examination in verbatim was faithfully placed on record. The appellate court has to go through each and every minute detail of the trial court record and then examine the same independently and thoroughly to reach at a just and reasonable conclusion.”

Apex Court in *Mehsana Nagrik Sahkari Bank Ltd. v. Shreeji CAB Co. & Ors. Etc.* 2014 CrL. L. J. 1953 had set aside the order directing *denovo* trial by observing that the case has to proceed from the stage where it is pending now, as it was found that the evidence was recorded in full and not in a summary manner.

Upon hearing both the sides and on perusal of impugned order, the trial court record and the decisions cited, I find that the chief-examination of respondent-complainant is a full-fledged recording of evidence and it is not a case of substance of evidence being recorded in the chief-examination of respondent-complainant.

Insofar as confining of cross-examination of respondent-complainant to the plea of defence taken by petitioners in the Notice under Section 251 of Cr.P.C. is concerned, this Court finds that the facts and circumstances of this case are such which persuades this Court to direct that the order passed by this Court on 5th February, 2014 (*Annexure P- 10*) restricting the cross-examination to the plea of defence taken by petitioners in the Notice under Section 251 of Cr.P.C. shall not stand in the way of petitioners to cross-examine respondent-complainant fully. Such a course is being adopted because respondent-complainant is still under cross-examination.

In the considered opinion of this Court, the procedure adopted in the complaint case in question is not a summary trial procedure and so, bar of Section 326 (3) of Cr.P.C. cannot be raised and successor Magistrate has to act upon the evidence already recorded by his predecessor. Since respondent-complainant has been partly cross-examined, therefore, the complaint case in question would proceed from the said stage to its logical conclusion.

In the light of the aforesaid, the dictum of the Apex Court in *Dashrath Rupsingh (supra)* does not apply to the instant case. Impugned order does not suffer from any palpable error. Consequently, this petition and the applications are dismissed with direction for expeditious disposal of the complaint case in question. Needless to say, any observation made herein will not be construed as an expression on merits before the trial court.

(SUNIL GAUR)
JUDGE

MARCH 25, 2015

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