IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.250 OF 2015
WITH
CRIMINAL WRIT PETITION NO.251 OF 2015
WITH
CRIMINAL WRIT PETITION NO.252 OF 2015
WITH
CRIMINAL WRIT PETITION NO.253 OF 2015

Rajesh S/o. Ashok Ranpura, Adult,
Indian Inhabitant of Vijaywada,
Andhra Pradesh, residing at D.
No.40-25-69, Ritvik Apartment, 21,
Sf-7, Near Benz Circle, Opp. Jyoti
Mahal Highway Road, Vijaywada,
Andhra Pradesh- 520010. Petitioner

Versus

1. Tube Corporation, a Partnership
Firm registered under the Indian
Partnership Act, 1932 havings its
head office at 409-A, Kohinoor
Complex, S.T. Road, Chembur Naka,
Chembur, Mumbai- 400 071,
through its Constiututed Attorney
Mr. Dilip Keru Dumbre.

2. The State of Maharashtra,
(Represented through Public
Prosecutor, High Court (Criminal
Side), Mumbai. ...Respondents

Mr. Rajesh Singh for the Petitioner.
Smt. Sushma S. Kulkarni for Respondent No.1
Smt. A.A. Mane, APP for Respondent No.2-State.

CORAM:-M.L. TAHALIYANI, J.

DATED :8th APRIL, 2015.

Oral Judgment :-

Heard learned Advocate for the Petitioner and Respondent No.1 and learned APP for Respondent No.2-State.

2. Admitted. Heard finally.

3. These criminal writ petitions impugn the orders passed by learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai, rejecting the applications of the Petitioner for returning the complaints to Respondent No.1 (original complainant) for being presented before the Court where the Drawee Bank is situated.

4. At the outset, it may be mentioned here that the four complaints bearing Criminal Case Nos.2391/SS/2010, 2393/SS/2010, 2392/SS/2010 and 2394/SS/2010 were pending in different courts and they have been assigned to the Court of Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai under the orders of Hon'ble Apex Court.

5. Issue involved in the present writ petitions is as to whether stage of section 145 (2) of the Negotiable Instruments Act (hereinafter referred to as 'the Act') has reached in all the complaints or not. As far as complaint bearing Criminal Case No.2394/SS/2010 is concerned, the Respondent No.1 has filed affidavit of evidence and the cross examination has also begun. In rest of the cases, affidavits of evidence have already been submitted by Respondent No.1 and the cross has to begin. It is obvious that since all the four cases are between same parties, cross examination in other three cases will commence only after completion of cross examination in Criminal Case No.2394/SS/2010.

6. The core issue before this Court is whether the stage under section 145 (2) of the Act is reached or not. This Court in the matter of **Sushil Kumar Saxena V/s. Mohammad Sami Ahmed** in Criminal Writ Petition No.3457 of 2012 has made the following observations while dealing with the same issue :

> "6. The question which arises for determination is as to whether the cases in which affidavit of evidence has been filed can be said to be the cases where the stage u/s 145 (2) of Negotiable Instruments Act has reached. To answer the said question, it may be necessary to go through Section 145 (2) of Negotiable Instruments Act, which runs as under :

"S.145. Evidence on affidavit.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.
(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein."

7. The bare perusal of Section 145 (1) and (2) of Negotiable Instruments Act, makes it clear that the evidence of the complainant can be given on affidavit and that it can be read in evidence. Sub-section (2) of Section 145 of Negotiable Instruments Act, empowers the Court to summon and examine any person giving his evidence on affidavit and examine him as to the facts contained therein. It is thus clear that basically the evidence of the complainant has to be recorded on affidavit and that the Court has discretion to call any such person, whose affidavit has been given and examine him as to the facts contained in the affidavit. Therefore, in my opinion, since the affidavit is filed by respondent No.1 and it is taken on record, the stage u/s 145(2) has reached. It is at this stage that the Magistrate has to decide, if the application is made either by the prosecution or the accused, as to whether the person whose affidavit is given, shall be called to be examined as to the facts contained in the affidavit. It is thus clear that the Magistrate can exercise the discretion only on the application made either by the prosecution or by the accused. We cannot say that since no such application has been made, the stage has not reached. The stage of Section 145 (2) has already reached and as soon as the Magistrate receives any application under sub-section (2), either from the prosecution or from the accused, he may exercise his discretion to summon and examine the person who has given the affidavit. Therefore, I do not agree with the

> learned counsel Mr. Shinde that the stage of Section 145 (2) has not reached. In view therefore, the proceedings pending before the Magistrate will have to be heard and decided by the same Magistrate."

7. In view of what has been stated in above para Nos.6 and 7 of the judgment of this Court, it is obvious that stage of section 145 (2) of the Act has reached in the four complaints and the learned Magistrate was right in rejecting the prayer of the Petitioner for return of these four complaints to Respondent No.1. I do not find any fault in the order of the learned Magistrate.

8. All the writ petitions are therefore, dismissed. Prayer for staying the proceedings is rejected. Trial is expedited. Learned Magistrate is directed to conclude the trial of the cases within a period of six months from today.

(JUDGE)