

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

% *Order Pronounced on: March 17, 2015*

+ **CRL.M.C. 388/2015 & CrI. M.A. No.1520/2015**

M/S RADLAY METAL PRODUCTS PVT LTD & ANR

..... Petitioners

Through Mr.Tannmaya Mehta, Adv. with
Mr.Rakesh Malhotra &
Mr.S.C.Verma, Adv.

versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through Mr.M.P.Singh, APP for the State.
Mr.Amit Sibal, Sr.Adv. with
Mr.Tanwar Mir & Mr.Govind Rishi,
Adv. for R-2.

+ **CRL.M.C. 390/2015 & CrI. M.A. No.1524/2015**

M/S RADLAY METAL PRODUCTS PVT LTD & ANR

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Through Mr.Tannmaya Mehta, Adv. with
Mr.Rakesh Malhotra &
Mr.S.C.Verma, Adv.

versus

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Mr.Amit Sibal, Sr.Adv. with
Mr.Tanwar Mir & Mr.Govind Rishi,
Adv. for R-2.

+ **CRL.M.C. 391/2015 & CrI. M.A. No.1526/2015**

M/S RADLAY METAL PRODUCTS PVT LTD & ANR

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Through Mr.Tannmaya Mehta, Adv. with
Mr.Rakesh Malhotra &
Mr.S.C.Verma, Advs.

versus

STATE (NCT OF DELHI) & ANR. Respondents

Through Mr.M.P.Singh, APP for the State.
Mr.Amit Sibal, Sr.Adv. with
Mr.Tanwar Mir & Mr.Govind Rishi,
Advs. for R-2.

+ **CRL.M.C. 394/2015 & Crl. M.A. No.1532/2015**

M/S RADLAY METAL PRODUCTS PVT LTD & ANR

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Through Mr.Tannmaya Mehta, Adv. with
Mr.Rakesh Malhotra &
Mr.S.C.Verma, Advs.

versus

STATE (NCT OF DELHI) & ANR. Respondents

Through Mr.M.P.Singh, APP for the State.
Mr.Amit Sibal, Sr.Adv. with
Mr.Tanwar Mir & Mr.Govind Rishi,
Advs. for R-2.

+ **CRL.M.C. 389/2015 & Crl. M.A. No.1522/2015**

M/S RADLAY METAL PRODUCTS PVT LTD & ANR

..... Petitioners

Through Mr.Tannmaya Mehta, Adv. with
Mr.Rakesh Malhotra &
Mr.S.C.Verma, Advs.

versus

STATE (NCT OF DELHI) & ANR. Respondents

Through Mr.M.P.Singh, APP for the State.

Mr.Amit Sibal, Sr.Adv. with
Mr.Tanwar Mir & Mr.Govind Rishi,
Advs. for R-2.

+ CRL.M.C. 392/2015 & CrI. M.A. No.1528/2015

M/S RADLAY METAL PRODUCTS PVT LTD & ANR
..... Petitioners
Through Mr.Tannmaya Mehta, Adv. with
 Mr.Rakesh Malhotra &
 Mr.S.C.Verma, Advs.

versus

STATE (NCT OF DELHI) & ANR. Respondents
Through Mr.M.P.Singh, APP for the State.
 Mr.Amit Sibal, Sr.Adv. with
 Mr.Tanwar Mir & Mr.Govind Rishi,
 Advs. for R-2.

+ CRL.M.C. 395/2015 & CrI. M.A. No.1536/2015

M/S RADLAY METAL PRODUCTS PVT LTD & ANR
..... Petitioners
Through Mr.Tannmaya Mehta, Adv. with
 Mr.Rakesh Malhotra &
 Mr.S.C.Verma, Advs.

versus

STATE (NCT OF DELHI) & ANR. Respondents
Through Mr.M.P.Singh, APP for the State.
 Mr.Amit Sibal, Sr.Adv. with
 Mr.Tanwar Mir & Mr.Govind Rishi,
 Advs. for R-2.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. By this order, I propose to decide all the above 7 petitions filed by the petitioners under Section 482 Cr.P.C. for setting-aside the order dated 23rd January, 2015 passed by the Additional Sessions Judge/ FTC(West), Tis Hazari, Delhi, in Criminal Revision Nos.02/2015, 03/2015, 04/2015, 05/2015, 06/2015, 07/2015 & 08/2015.
2. The facts of the matter are that respondent No.2 had filed a complaint against the petitioners, alleging that they have committed an offence under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the "Act") due to dishonour of cheques. It is the case of the said respondent that all the cheques were issued as post-dated cheques and petitioner No.2 assured and promised that they have issued PDC for each of the consignments and the same would be honoured on the date of presentation.
3. The Trial Court summoned the petitioners. Notice under Section 251 Cr.P.C. for the offence punishable under Section 138 of the Act was issued. Thereafter, the statement of the complainant/respondent No.2 was recorded. The statement of the petitioners and then the defence evidence was recorded. The petitioners examined Mr.Naresh Kakkar as DW-1, Mr.Vir Pal Singh as DW-2, Mr.Vikas Sehrawat as DW-3, Mr.Pradeep Raikhi as DW-4, Mr.Kamal Ahuja as DW-5 and Mr.Narender Singh as DW-5.
4. When the matters were at the final stage, the applications for leading further evidence under Section 45 of the Evidence Act, 1872

were filed on behalf of the petitioners, to call the Handwriting Expert. In the applications, it was stated by the petitioners that the cheques in question were handed over to respondent No.2 as “undated Advanced Security Cheques”; those were not the post-dated cheques and since the handwriting difference on the cheques between ‘handwriting of date on the cheque’ as compared to ‘handwriting on the body of the cheque’ is apparent on all the cheques, the petitioners wanted to call the handwriting expert in support of their case.

5. The prayer made in the applications was not allowed by the Trial Court on the reasons given in the common order dated 24th December, 2014. The relevant extracts of the said order, while dismissing the above said applications reads as under:-

“In so far as the application for examination of handwriting on the cheques is concerned, again I do not see merit in the submission of the accused. The accused has already admitted his signatures on the cheques in question and even other particulars except the date. The defence is that the cheques in question were undated security cheques in which the date was filled by the complainant. It is also not in dispute that the cheques in question were given by the accused to the complainant. Thus the manner in which the cheques in question came into the possession of the complainant is also not suspect. It is established law that the holder of a cheque has authority to fill its particulars and the accused has the liberty to establish his contention that the cheques were in fact security cheques by adducing other relevant evidence. Reliance is placed upon the judgment in **Ravi Chopra vs State & Anr., Crl. M.C. 5211/2006 & Crl. M.A. No. 8864/2006**, wherein it was held that

“where the accused facing the trial for the offence u/s 138 is disputing the signature on the cheque itself, then this is a permissible defence within the scope of Section 138 of NI Act but where the signature are admitted, although the cheques are issued in blank there is a implied authority given to the payee to fill up the instrument. Section 20 of NI Act also say so. Hence, there is no requirement for sending the cheque for the opinion of handwriting expert for proving the same. Numerous situations can be thought of where the handwriting and the ink can differ. For instance when an entire cheque is typed as to its material particulars, and the signature is in the handwriting of the drawer, such cheque and hardly be said to be void for that reason.”

6. The said order passed by the Trial Court was challenged by the petitioners by way of filing the criminal revisions. As the impugned order was common in all the matters, after hearing, the Additional Sessions Judge/FTC (West), Tis Hazari, Delhi dismissed all the 7 criminal revisions by common order dated 23rd January, 2015. Para 9 of the said order reads as under:-

“9. Keeping in view the submissions and the facts, I found that the petitioner/respondent when appeared in the witness box, admitted that the cheques were filled including the amount and duly signed. It is also admitted that the cheques amount is according to the bill amount i.e. payment is made bill to bill. He only dispute that date is not in his handwriting. But in my opinion the Trial Court has rightly held in view of the judgments of Delhi High Court that if all other facts are admitted i.e. the cheques was issued in the name of the complainant, amount filled, duly signed, even the liability is admitted as the record shows that the respondent/petitioner made an application that he is ready to make the payment of

the cheque amount and he only disputes that the date is not filled by him then that is no defence as per judgment of Hon.High Court of the Delhi and there is no requirement of sending the cheques for opinion of Hand writing Expert for establishing the same. So far judgment relied upon by the counsel for the petitioner is concerned, those are not applicable in the facts and circumstances of this case. So far as the judgment T.Nagappa Vs. Y.R.Mualidhar, there the dispute was that the cheques was issued in 1999, whereas the complainant was filled in 2004. The expert opinion was required only about the age of the ink and to establish the fact that it was a security cheque which given about five years back, here that is not the defence. Hence this judgment is not applicable. So far as the other judgment is concerned that only speaks of that cheques if issued as security would not come within the purview of Section 138 of the Negotiable Instruments Act. But here it is an admitted fact that the entire body of the cheque was filled by the revisionist and the cheque amount tallies and co-relates with the bills i.e. the cheques issued against specific bills. Keeping in view all these facts in my opinion trial court has rightly dismissed the application. There is no merit in the revision. The same is dismissed.”

7. After dismissal of all the 7 criminal revisions, the petitioners challenged the said order by filing of the above said 7 petitions under Section 482 Cr.P.C. for setting-aside the impugned order dated 23rd January, 2015. When the matters were listed first time before this Court on 2nd February, 2015, the following order was passed:-

“Petitions were argued for some time by Mr. Tanmay Mehta, learned counsel appearing on behalf of the petitioners. When a suggestion was made by the learned counsel for the petitioner to settle the disputes Mr. Naresh Kakkar, petitioner No.2/Director of petitioner No.1 who is present in person submits that without

prejudice to his rights, the petitioner No.1 is ready to pay the cheque amount along with interest @ 6% p.a. to the complainant from the date of amount due till the date of payment. He further states that in case the complainant is not ready to accept the proposal then the matter be considered on merits and the said proposal not be treated as an admission of liability on the part of the petitioners.

In view of the statement made by petitioner No.2/Director of petitioner No.1, issue notice to respondent No.2, returnable on 27th February, 2015.

Proceedings in the Court below shall remain stayed till further orders.

It was clarified to the petitioner that as far as the interest component is concerned, as suggested, the same shall be considered by the Court on the next date.”

8. It was recorded in the subsequent order dated 3rd March, 2015 that the settlement is not possible, as Mr.Amit Sibal, learned Senior counsel appearing on behalf of respondent No.2 has informed the Court that the said respondent has been paying interest to the Bank with regard to the transactions @ 15% per annum, thus the offer made by the petitioners to receive the cheques amount along with interest @ 9% per annum maximum is not acceptable to his client. At the same time, the learned counsel for the petitioners is not agreeable to pay the interest @ more than 9% as suggested by his clients and he requested that the petitions be decided on merits. This Court is left with no other option but to decide the abovementioned matters on merits.

9. The petitioners are not denying the fact that there was a commercial transaction between the parties. I have been informed by the respondent No.2 that the civil suit for recovery of the amount filed by the said respondent against the petitioners are also pending for recovery of huge amount before this Court. It is the admitted case of the petitioners before this Court that the cheques in question have been signed and all other particulars were also filled by the petitioners except the dates. It has also been noticed that the petitioners had earlier challenged various orders by raising the different pleas about the territorial jurisdiction as well as authority of respondent No.2 who has filed the complaints. The said orders have been challenged upto this Court and all the quashing proceedings have been dismissed. In one such groups of quashing proceedings, which were dismissed on 12th February, 2014, the directions were issued by this Court to the Trial Court to decide the cases expeditiously and preferably within 6 months and in case, for any reason the said complaints are not decided within the said period, to decide the complaints within a period of one year.

10. Admittedly, 6 months as well as one year period has already been expired. In between, after passing the said order on 12th February, 2014, another application was filed by the petitioners. The Trial Court has partly allowed the said application allowing the petitioners to summon the witness No.7 or in the alternative, to place on record certified copies.

11. As far as the applications filed by the petitioners under Section 45 of the Evidence Act are concerned where the petitioners have

asked to call the Handwriting Expert, the Trial Court has dismissed the same on 24th December, 2014. The criminal revisions against the said order were also dismissed on merits by the impugned order dated 23rd January, 2015. At present, this Court does not wish to decide the other disputes on merits except to consider the order of the Trial Court as well as the Revisional Court who have passed the detailed orders on the applications filed by the petitioners to summon the Handwriting Expert. This Court also does not want to express any opinion on merits, as the matters are at the final stage before the Trial Court.

12. Mr.Tanmay Mehta, learned counsel for the petitioners has made his submissions, by alleging that the cheques in question were undated and the same were issued as Advanced Security Cheques; those were not the post-dated cheques. Since the same were undated and were issued for the purpose of security, the complaints filed by respondent No.2 under Section 138 of the Act are not maintainable. In order to compare the handwriting on the body of the cheques with the dates filled, it is necessary that the prayer made in the applications under Section 45 of the Evidence Act ought to have been allowed by the Trial Court. He has referred various decisions in support of his submissions and particularly, he has heavily relied upon the case of ***T. Nagappa v. Y.R. Muralidhar***, (2008) 5 SCC 633.

13. On the other hand, Mr.Amit Sibal, learned Senior counsel appearing on behalf of respondent No.2 has raised an objection about the maintainability of the present petitions. He says that since the revision petitions have already been dismissed by the Additional

Sessions Judge, the second revision in the garb of the quashing proceedings is not maintainable. There is no provision of second revision petition as Section 397(3) Cr.P.C.bars the same.

14. On merits, his argument is that all particulars of the cheques are filled by the petitioners and those bear the signatures thereon of the petitioners which are not denied by them. He further states that the cheques amount tallies with the bills which are issued against the specific bills. The said fact has been admitted by the petitioners in their evidence. The filling-up of the date is not much material if the other details are admitted by the petitioners. He submits that in the present cases, there is hardly any gap of period of time, hence the question of knowing about the age of ink used on the cheques does not arise. He refuted the argument of the learned counsel for the petitioners with regard to the transfer of the impugned transactions amount through RTGS, by stating that out of many transactions part amount worth less than 25% amount was transferred by way of RTGS and the complaints amount has not been paid or transferred by the petitioners by way of RTGS. The arguments are totally vague and after-thought; there is no requirement for sending the cheques for opinion of Handwriting Expert as the same are tallying with the amount against the bills issued by respondent No.2. The cheques amount is due which was not cleared by the petitioners who are now deliberately and intentionally applying all tactics to delay the decision in the matters and are raising all types of objections under the sky.

15. It is an undisputed fact in the present matters that the Revisional Court dismissed the petitions of the petitioners. Second

Revision did not lie to the High Court in view of the provisions of Section 397(3) of Cr.P.C. Section 397(3) bars a second revision application by the same party. It is now well settled that the inherent powers under Section 482 of the Cr.P.C. cannot be utilised for exercising powers which are expressly barred by the Code. However, at the same time, this Court is conscious about the fact that if there is grave miscarriage of justice and abuse of the process of the Court or required procedure has not been complied with by the Metropolitan Magistrate, the High Court in its jurisdiction under Section 482 CrPC can correct the grave miscarriage of justice under special circumstances.

16. In view of the facts and circumstances explained and the findings arrived at by the two Courts below, I do not think that the present cases are fit one where any inference can be drawn that there is any grave miscarriage of justice done to the petitioners by abusing the process of law. There is no infirmity in any of the orders.

17. As far as the judgment referred by Mr.Mehta in the case of **T. Nagappa** (supra) is concerned, the same has been rightly distinguished by the Trial Court as there was dispute about the date and year of issuance of cheque. The contention of the accused was that the same was issued in 1999 though the complainant alleged that it was filled in 2004. Therefore, the opinion was sought in order to know about the age of the ink as that Court may draw inference whether it was a security cheque or not. Therefore, the request was allowed. No doubt, the Court under these circumstances can exercise its discretion to pass such orders, but I am of the view that it

depends on case to case basis. Under these circumstances, I am not inclined to exercise my discretion in the present matters in view of the facts of the present cases. The petitions are accordingly dismissed.

18. The Trial Court to decide the complaints expeditiously.

19. Pending applications also stand disposed of.

20. No costs.

(MANMOHAN SINGH)
JUDGE

MARCH 17, 2015