

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

Date of Decision: February 05, 2015

+ (i) CRL.M.C. 2414/2014 & Crl.M.A.8181/2014

JOSEPH SAMUEL @ RAJ SAMUEL Petitioner
Through: Mr. Raman Gandhi, Advocate

versus

ASHUTOSH AHLUWALA Respondent
Through: In person

+ (ii) CRL.M.C. 2428/2014 & Crl.M.A.8213/2014

JOSEPH SAMUEL @ RAJ SAMUEL Petitioner
Through: Mr. Raman Gandhi, Advocate

versus

ASHUTOSH AHLUWALA Respondent
Through: In person.

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT
(ORAL)**

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In the above captioned two petitions, quashing of complaints under Section 138 of *The Negotiable Instruments Act, 1881* is sought while relying upon order of 3rd October, 2011 (*Annexure –B*) passed by a Coordinate Bench of this Court while dealing with the Regular First Appeal application filed by petitioner herein.

With the consent of both the sides, the above captioned two

petitions have been heard together and are being disposed of by this common judgment.

Upon Notice, respondent appears in person and chooses to argue this petition himself.

At the hearing, learned counsel for petitioner had placed reliance upon Apex Court's decisions in *Gian Singh Vs State of Punjab* ' (2012) 10 SCC 303 and *Padal Venkata Rama Reddy Alias Ramu v. Kovvuri Satyanarayana Reddy & Ors.* (2011) 12 SCC 437 to submit that the subject matter of these complaint cases and the civil appeal is the same and once the civil appeal is over and the arrears of rent etc. have been paid and the property in question has been vacated, thereafter, continuance of proceedings arising out of FIR in question would be an exercise in futility. Respondent had placed reliance upon Apex Court's decision in *Sosamma Vs. Rajendran & ors.* 1993 CrL.J.2196 to submit to the contrary.

Upon hearing and on perusal of the complaints in question, order (*Annexure-B*), material on record and the decisions cited, I find that the question which arises for consideration is whether order (*Annexure-B*) has been complied with by the parties or not.

Petitioner claims compliance of order (*Annexure-B*) whereas respondent disputes it. Compliance or non-compliance of order (*Annexure-B*) is a disputed question, which cannot be gone into in proceedings under Section 482 of the Cr.P.C.. Such a view is being taken in view of Apex Court's dictum in *Sosamma (Supra)*. As compliance or non-compliance of order (*Annexure-B*) is required to be established in the criminal complaint proceedings, therefore, reliance placed by petitioner's

counsel upon decisions in *Gian Singh (Supra)* and *Padal Venkata Rama Reddy (Supra)* is of no avail. Question of adjustment regarding payments made in terms of order (*Annexure-B*) is also a question of fact which cannot be gone into in these proceedings under Section 482 of the Cr.P.C. and would be subject matter of consideration before the trial court.

Consequently, the above-captioned two petitions and applications are dismissed while refraining to comment upon the merits of the case, with liberty to petitioner to raise the pleas taken herein before the trial court.

(SUNIL GAUR)
JUDGE

FEBRUARY 05, 2015

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