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

+ **TR.P.(CRL.) Nos.12-13/2015**

AHILESHWAR DAYAL BHARGAVA

..... Petitioner

Through: Mr. Vikas Gupta & Mr. Sachin
Midha, Advocates.

versus

STATE OF DELHI & ANR

..... Respondents

Through: Ms. Isha Khanna, APP.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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27.02.2015

CrI.M.A. Nos.2879/2015 and 2904/2015

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

TR.P.(CRL.) Nos. 12-13/2015 and CrI.M.A. Nos.2878/2015 & 2903/2015

3. These petitions have been preferred by the petitioner under Section 407 read with Section 482 of the Cr.P.C. for transferring criminal complaint No. 749/DG/10 and criminal complaint No. 2763/1/10, both filed under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) titled *V.K. Sharma Vs. M/s Cogent EMR Solutions Ltd.* pending before the Court of learned M.M. Riya Guha, Tis Hazari Courts, New Delhi. The petitioner

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seeks transfer of the said complaint cases preferred by the respondent to the Court of competent jurisdiction in Saket District. The premise of the petitions is that the bank of the petitioner, which dishonoured the cheque is situated within the jurisdiction of the Saket District Courts.

4. The petitioner has sought to place reliance on the judgment of the Supreme Court in *Dashrath Rupsingh Rathod Vs. State of Maharashtra*, (2014) 9 SCC 129. The application moved by the petitioner before the learned Magistrate to urge that the complaint is liable to be returned by applying the ratio of *Dashrath Rupsingh Rathod* (supra) has been rejected on 06.02.2015.

5. A perusal of the order dated 06.02.2015 shows that in the present cases, the matters were listed for the petitioner/ accused evidence. In fact, the notice was served on the accused No.2 on 13.08.2013. Thereafter, the matters were posted for DE and they were pending at that stage for the last two years. The learned Magistrate held that the cases had gone beyond the stage of Section 145(2) of the NI Act since the petitioner accused did not move any application under Section 145(2) of the NI Act and even the learned Magistrate did not consider it necessary to require the cross-examination of the complainant's witness.

6. The submission of learned counsel for the petitioner is that after the service of notice, the matters were straightaway put up for DE. He submits that no DE has been led till date and thus, it cannot be said that the stage of Section 145(2) of the NI Act has been reached in the matters. He specifically places reliance on the following extract from the judgment of

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the Supreme Court in *Dashrath Rupsingh Rathod* (supra):

"Consequent on considerable consideration we think it expedient to direct that only those cases where, post the summoning and appearance of the alleged Accused, the recording of evidence has commenced as envisaged in Section 145(2) of the Negotiable Instruments Act, 1881, will proceeding continue at that place. To clarify, regardless of whether evidence has been led before the Magistrate at the pre-summoning stage, either by affidavit or by oral statement, the Complaint will be maintainable only at the place where the cheque stands dishonoured."

7. Having heard learned counsel and perused the decision of the Supreme Court, I am of the view that there is no merit in the petitioner's submission. It is clear that the stage of Section 145(2) of the NI Act in the present cases stood crossed since the petitioner accused did not move any application for cross-examination of the complainant's witness and the Court also on its own did not require that the complainant's witness be produced for cross-examination. The stage of Section 145(2) of the NI Act was crossed when the matters were fixed for DE at which stage the matters remained pending for two years. The petitioner cannot be heard to say that no progress has been made in the matters when he himself was responsible for the non-progress of the cases for over two years.

8. Accordingly, I find no merit in these petitions and dismiss the same.


VIPIN SANGHI, J

FEBRUARY 27, 2015

B.S. Rohella