$~26, 2, 13, 14, 41-44, 47, 48, 51, 52, 62, 70-74, 33-35, 30, 1, 23 & 38

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

Date of Decision: 23rd March, 2015

\+ (i) **CRL.M.C. 700/2012 & Crl.M.A.No.2476/2012**

NEERAV J. SHAH & ANR. ..... Petitioners
Through: Mr. R.K.Sachdeva, Advocate

versus

STATE & ANR. .... Respondents
Through: Mr.Karan Singh, Additional Public Prosecutor for respondent-State with SI Indrapal Singh, CAW Cell
Mr. Tarun K. Bedi, Advocate for Respondent No.2

\+ (ii) **CRL.M.C. 5435/2014 & Crl.M.A.No.18534/2014**
\+ (iii) **CRL.M.C. 5433/2014 & Crl.M.A.No.18530/2014**
\+ (iv) **CRL.M.C. 5437/2014 & Crl.M.A.No.18538/2014**
\+ (v) **CRL.M.C. 789/2015 & Crl.M.A.No.2979/2015**
\+ (vi) **CRL.M.C. 790/2015 & Crl.M.A.No.2982/2015**
\+ (vii) **CRL.M.C. 791/2015 & Crl.M.A.No.2984/2015**
\+ (viii) **CRL.M.C. 792/2015 & Crl.M.A.No.2986/2015**
\+ (ix) **CRL.M.C. 795/2015 & Crl.M.A.No.2992/2015**
\+ (x) **CRL.M.C. 796/2015 & Crl.M.A.No.2994/2015**
\+ (xi) **CRL.M.C. 934/2015 & Crl.M.A.No.3495/2015**
\+ (xii) **CRL.M.C. 935/2015 & Crl.M.A.No.3497/2015**

IFCI FACTORS LIMITED ..... Petitioner
Through: Mr. Mandeep Singh Vinaik and Mr. Deepak Bashta, Advocates

versus

STATE OF NCT OF DELHI & ORS .... Respondents
Through: Mr.Karan Singh, Additional Public Prosecutor for respondent-State

Mr. Kailash Pandey & Mr. Ranjeet Singh, Advocate for Respondents No.2 to 6 in Crl.M.C.Nos.789-792 & 795 of 2015
Mr. Aman Varma, Advocate for Respondents No.2 to 6 in Crl.M.C.No.934/2015

\+ (xiii) **CRL.M.C. 1138/2015 & Crl.M.A.Nos.4217-4219/2015**
\+ (xiiv) **CRL.M.C. 1153/2015 & Crl.M.A.Nos.4249-4251/2015**
\+ (xv) **CRL.M.C. 1154/2015 & Crl.M.A.Nos.4252-4254/2015**
\+ (xvi) **CRL.M.C. 1155/2015 & Crl.M.A.Nos.4255-4257/2015**
\+ (xvii) **CRL.M.C. 1156/2015 & Crl.M.A.Nos.4258-4260/2015**
\+ (xviii) **CRL.M.C. 1157/2015 & Crl.M.A.Nos.4261-4263/2015**

AHSHAN ALAM & ANR .....Petitioners
Through: Mr. S.A. Khan, Ms. Sophiya Salim Mr. Mirza Rizwan Baij and Ms. Archna Rani, Advocates

versus

THE STATE (GOVT OF NCT OF DELHI) & ANR ..Respondents
Through: Mr.Karan Singh, Additional Public Prosecutor for respondent-State

\+ (i) (xix) **CRL.M.C. 4974/2014 & Crl.M.As.17049-50/2014**

M/S SHARMA FOUNDATION ..... Petitioner
Through: Mr. Mukesh M. Goel, Advocate

versus

B B JOSHI ..... Respondent
Through: Nemo

\+ (xx) **CRL.M.C. 613/2015 & Crl.M.As.2406-07/2014**

KHIYA RAM KHILWANI ..... Petitioner
Through: Mr. Mukesh M. Goel, Advocate

versus

RAVINDER MACHHAN ..... Respondent
Through: Nemo

\+ (xxi) **CRL.M.C. 4857/2014 & Crl.M.As.16662/2014**

SANJAY SHARMA ..... Petitioner
Through: Mr. Mukesh M. Goel, Advocate

versus

V K MISHRA ..... Respondent
Through: Nemo

\+ (xxii) **CRL.M.C. 4109/2014 & Crl.M.As.14105/14, 14543/14**

DEVENDRA N KAMAT ..... Petitioner
Through: Mr.Virender Goswami, Mr. Soni Singh and Mr. Subham Aggarwal, Advocates

versus

MODELAMA EXPORTS LTD ..... Respondent
Through: Mr. Rajat Wadhwa & Mr. Amritansh Batheja, Advocates

\+ (xxiii) **CRL.M.C. 4110/2014 & Crl.M.As.14545/14, 14107/14**

BALCHANDRA S BAKHLE ..... Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate with Mr. Virender Goswami, Ms. Soni Singh, Ms. Swati Goswami & Mr. Shubham Aggarwal, Advocates

versus

MODELAMA EXPORTS LTD ..... Respondent

Through: Mr. Rajat Wadhwa & Mr. Amritansh Batheja, Advocates

\+ (xxiv) **CRL.M.C. 4111/2014 & Crl.M.As.14109/14, 14544/14**

RASHID KHAN ..... Petitioner

Through: Mr.Virender Goswami, Mr. Soni Singh and Mr. Subham Aggarwal, Advocates

versus

MODELAMA EXPORTS LTD ..... Respondent

Through: Mr. Rajat Wadhwa & Mr. Amritansh Batheja, Advocates

\+ (xxv) **CRL.M.C. 267/2015 & Crl.M.A.No.1017/2015**

ANIL D KANERIA & ANR ..... Petitioners

Through: Mr. Atul Nanda, Sr. Advocate with Mr. Deepak Mishra, Advocate

versus

M/S ORIENT BELL LIMITED ..... Respondent

Through: Mr. R.B.Singhal, Sr. Advocate with Mr. Anshuj Dhingra & Mr. Janander Mahajan, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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With the consent of learned counsel for parties, the above-captioned petitions were heard together as the question raised in these petitions is similar and by this common judgment, these petitions are being disposed of.

In the above-captioned petitions, interpretation of Section 145(2) of *Negotiable Instruments Act, 1881* is the question which falls for consideration. Learned Senior Counsel for petitioner-*Balchandra* [in Crl.M.C.No.4110/2014] drew the attention of this Court to trial court's order of 3rd January, 2013 whereby Notice under Section 251 Cr.P.C. has been framed and application of accused under Section 145(2) of *Negotiable Instruments Act, 1881* was allowed and the case was adjourned for cross-examination of complainant for 11th March, 2013. On the aforesaid date, complainant had placed on record additional documents and the trial court had adjourned the case for 22nd April, 2013 for cross-examination of complainant. However, it is evident from the order of 22nd April, 2013 of trial court that on that day application for transfer of case was filed by accused for transfer of the case to the court of competent territorial jurisdiction. The said application has been rejected by trial court vide order of 22nd April, 2013 on the ground that accused has been summoned to face trial and it was not in its power to review its own order.

Aforesaid order of trial court was assailed by petitioner-*Balchandra* by way of revision petition which stands dismissed vide order of 27th August, 2013. To assail the orders of courts below learned counsel for petitioner-*Balchandra* relied upon Apex Court decision in *Dashrath Rupsingh Rathod v. State of Maharashtra* (2014) 9 SCC 129 wherein it has been held as under:-

> *"We are quite alive to the magnitude of the impact that the present decision shall have to possibly lakhs of cases pending in various courts spanning across the country. One approach could be to declare that this judgment will have only prospective pertinence i.e. applicability to complaints that may be filed after this pronouncement. However, keeping in perspective the hardship that his will continue to bear on alleged respondent-accused who may have to travel long distances in conducting their defence, and also mindful of the legal implications of proceedings being permitted to continue in a court devoid of jurisdiction, this recourse in entirety does not commend itself to us. Consequent on considerably 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. To obviate and eradicate any legal complications, the category of complaints cases where proceedings have gone to the stage of Section 145(2) or*

> *beyond shall be deemed to have been transferred by us from the court ordinarily possessing territorial jurisdiction, as now clarified, to the court where it is present pending. All other complaints (obviously including those where the respondent-accused has not been properly served) shall be returned to the complainant for filing in the proper court, in consonance with our exposition of the law. If such complaints are filed/refiled within thirty days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time-barred."*

Reliance was also placed upon later decision of Supreme Court in *Shivgiri Associates v. Metso Mineral (India) Pvt. Ltd*. (2014) 12 SCC 366 and judgment of Bombay High Court in *Peter Devid Xavier Pinto v. Dinesh M. Ranawat & Anr*. 2014 SCC Online Bom. 1248 as well as judgment of this Court in Tr. P.(Crl.) No.68/2014 titled *HDFC Bank Ltd. v. Vardhman Precision Profiles & Tubes P. Ltd. & Anr.* decided on 24th September, 2014 to submit that mere filing of evidence by way of affidavit by the complainant would not save the proceedings from the operation of law because recording of evidence had commenced as envisaged in Section 145(2) of the *Negotiable Instruments Act, 1881*. Learned senior counsel also relied upon Apex Court's judgment in *Mandvi Cooperative Bank Limited v. Nimesh B. Thakore* (2010) 3 SCC 83 to substantiate the above stand. Thus, it was submitted on behalf of petitioner-*Balchandra* that impugned order deserves to be quashed and complaints of complainant deserve to be transferred to court of competent territorial jurisdiction. Learned counsel for petitioners-*Devender and Rashid Khan* adopts the above submissions.

Learned counsel for respondent-*Modelama Exports Ltd.* supported the impugned order and submits that the stage under Section 145(2) of *Negotiable Instruments Act, 1881* is reached when the application under Section 145(2) of *Negotiable Instruments Act, 1881* is allowed and the court permitted the complainant to tender his chief-examination by way of an affidavit and it has been so done. Attention of this Court was drawn to Section 137 of *Indian Evidence Act, 1872* to submit that commencement of evidence began by filing of chief-examination and thus, it is submitted that Apex Court in *Dashrath Rupsingh* (supra) is quite clear that once the stage under Section 145(2) has reached, then the case is not to be transferred.

In the 11 petitions filed by petitioner-*IFCI Factors Limited*, Notice under Section 251 Cr.P.C. has not been framed and so by relying upon Apex Court's decision in *Dashrath Rupsingh* (supra), trial court has directed the return of petitioner-*IFCI Factors Limited's* complaints to the court of competent territorial jurisdiction. During the course of hearing, Mr. Mandeep Singh Vinayak, learned counsel for petitioner-*IFCI Factors Limited* had relied upon order of 25th August, 2014 passed by High Court at Bombay in Crl.W.P.No.2362/2014 *Ramanbhai Mathurbhai Patel v. State of Maharashtra & Anr.* decided on 25th August, 2014 wherein Apex Court's decision in *Dashrath Rupsingh* (supra) has been noticed but on the ground of cheques being at par, the complaints were allowed to be proceeded with by observing that the cheques are made at par for the convenience of the creditor. It was pointed out by Mr. Mandeep Singh Vinayak, Advocate that Special Leave Petition against *Ramanbhai* (supra) has been dismissed by the Apex Court and the decision of a Coordinate Bench of this Court in Crl.M.C.No.4407/2014 *M/s Goyal MG Gases Pvt. Ltd. v. State & Ors*. rendered on 16th December, 2014 has been stayed by the Apex Court vide order of 13th January, 2015 and so, the outcome of the decision of *M/s Goyal MG Gases Pvt. Ltd*. from the Apex Court ought to be awaited.

In above-captioned six petitions filed by petitioners-*Ahshan Alam & Anr.* the respondent-complaint has been ordered to be tried as petitioners' applications under Section 145(2) of *Negotiable Instruments Act, 1881* already stand allowed. However, trial court in the impugned order has noted that cross-examination of respondent-complainant has not yet begun but the stage under Section 145(2) of *Negotiable Instruments Act, 1881* has reached. To assail the impugned order, Mr. S.A.Khan, learned counsel for petitioners-*Ahshan Alam & Anr.* had placed reliance upon decision of High Court of Bombay in *Peacock Industries Limited & Ors. v. Budhrani Finance Ltd. & Anr. IV (2006) BC 302.*

Mr. Mukesh M. Goel, learned counsel for petitioners in [Crl.M.C.No.4974/2014, Crl.C.No.613/2015 & Crl.M.C.No.

4857/2014] had assailed the impugned order vide which the complaints are directed to be returned for want of territorial jurisdiction as the cheques in question were drawn at Dehradun (Uttarakhand), Rohru (H.P.) and Jagdishpur (U.P.) respectively. In the three complaints filed, Notice under Section 251 Cr.P.C. was not framed and so by applying the dictum of Apex Court in *Dashrath Rupsingh* (supra), the complaints have been returned. Learned counsel for petitioners had urged that the cheques in question were payable at par and were dishonoured in Delhi, so the Delhi Courts have the jurisdiction.

Mr. Atul Nanda learned Sr.Counsel for petitioners- *Anil D. Kaneria & Ors.* [Crl.M.C.No.267/2015] had submitted that petitioners' application under Section 145(2) of *Negotiable Instruments Act, 1881* has been allowed on 24th September, 2014 i.e. after the Apex Court's decision in *Dashrath Rupsingh* (supra) rendered on 1st August, 2014 but cross-examination of respondent-complainant had not yet begun and so by applying the dictum of Apex Court in *Dashrath Rupsingh* (supra), the complaint in question ought to be returned for being tried by court of competent territorial jurisdiction. Mr.R.B.Singhal, learned Sr.Counsel for respondent-*M/s Orient Bell Limited* supported the impugned order and had submitted that in view of Apex Court's decision in *Dashrath Rupsingh* (supra), the stage under Section 145(2) *Negotiable Instruments Act, 1881* had reached and so Delhi Courts have the territorial jurisdiction to try the complaint in question.

In Crl.M.C.No.700/2012 filed by petitioner-*Neerav J. Shah & Anr.*, it was pointed out by learned counsel that although application under Section 145 (2) of *Negotiable Instruments Act, 1881* was allowed in the year 2011, but till date no cross-examination of respondent-complainant has taken place and so the Delhi Courts lack the territorial jurisdiction to try the complaint in question as the cheque in question was dishonoured by petitioner's bank i.e. *Union Bank of India in Mumbai*.

The question of '*cheques at par*' raised in petitions by petitioners-*IFCI Factors Ltd., M/s Sharma Foundation, Khiya Ram Khilwani & Sanjay Sharma* was not subject matter of consideration in *Dashrath Rupsingh* (supra), which conclusively decides question of territorial jurisdiction and so this question is left open.

Upon having heard learned counsel for parties and on perusal of the impugned orders in above-captioned petitions, material on record and the decisions cited, this Court is of the considered view that return of complaints in the 11 petitions filed by *IFCI Factors Limited* does not suffer from any palpable error as Notice under Section 251 Cr.P.C has not been framed in these complaint cases. Consequentially, the above-captioned 11 petitions filed by *IFCI Factors Limited* are hereby dismissed while not commenting upon merits of the case.

In the three petitions filed by petitioners-*M/s Sharma Foundation, Khiya Ram Khilwani & Sanjay Sharma,* even Notice under Section 251 Cr.P.C. has not been framed and so, by applying the dictum of Apex Court in *Dashrath Rupsingh* (supra), the impugned orders of 12th September, 2014, 8th December, 2014 and 12th September, 2014, vide which the complainants in question were directed to be returned are sustained and these petitions [Crl.M.C.No.4974/2014, Crl.M.C.No.613/2015 & Crl.M.C.No. 4857/2014] are dismissed.

In rest of the above-captioned petitions, applications under Section 145(2) of *Negotiable Instruments Act, 1881* have been allowed but the cross-examination of respondent-complainant has not yet taken place. During the course of hearing, attention of this Court was drawn to an order of a Coordinate Bench of this Court in *Naveen Malhotra v. State (Govt. of NCT of Delhi) & Anr*. 2015 SCC Online Del.7613 and decision of a Coordinate Bench of this Court in *CISCO Systems Capital (India) Pvt. Ltd. v. New Delhi Tele Tech Pvt. Ltd. & Ors.* 2015 SCC Online Del.6535, wherein Apex Court decision in *Dashrath Rupsingh* (supra) has been interpreted to hold that once application under Section 145(2) of *Negotiable Instruments Act, 1881* is allowed then such complaint reached a stage, when the complaint is to be tried and not returned for want of territorial jurisdiction. A bare reading of Section 145(2) of *Negotiable Instruments Act, 1881* makes it clear that mere allowing of application under Section 145(2) *Negotiable Instruments Act, 1881* is not sufficient and the complainant is required to be summoned and examined. Thus, it becomes abundantly clear that cross-examination of complainant in pursuance to allowing of application under Section 145(2) *Negotiable Instruments Act, 1881* is necessary to enable the Court to retain the complaint under Section 138 of *Negotiable Instruments Act, 1881* in terms of Apex Court decision in *Dashrath Rupsingh* (supra).

On careful perusal of afore-noted two decisions of this Court, it becomes apparent that Apex Court decision rendered by Hon'ble Mr. Justice T.S.Thakur and Hon'ble Mr. Justice Vikramjit Sen in *Shivgiri Associates* (supra) was not brought to the notice of the two Coordinate Benches of this Court, which had rendered the decision in cases of *CISCO Systems* (supra) and *Naveen Malhotra* (supra). The Apex Court's decision in *Dashrath Rupsingh* (supra) is authored by Hon'ble Mr. Justice Vikramajit Sen, who is also party to the later Apex Court decision in *Shivgiri* (supra), wherein paragraph No.22 of *Dashrath Rupsingh* (supra) stands duly explained. In *Shivgiri* (supra), it has been clearly held that evidence post-summoning has not been recorded and so the complaint under Section 138 of *Negotiable Instruments Act, 1881* was directed to be transferred to the Court of competent territorial jurisdiction.

In the face of latest Apex Court decision in *Shivgiri* (supra), reliance placed upon decisions in *Peter David Xavier Pinto v. Dinesh M.Ranwat & Anr.* 2014 SCC Online Bom 1248, New Delhi *Tele Tech Pvt. Ltd. v. M/s CISCO Systems Capital (India) Pvt. Ltd.* 2015 SCC Online Del.6533, *Radhey Shyam Garg v. Naresh Kumar*

Gupta (2009) 13 SCC 201 and *CISCO Systems Capital (India) Pvt. Ltd. v. New Delhi Tele Tech. Pvt. Ltd. & Ors*. 2015 SCC Online Del 6535 is of no avail. Applying the dictum of Apex Court in *Dashrath Rupsingh* (supra) which is reiterated in *Shivgiri* (supra), it is held that the complaints in which cross examination in pursuance to allowing of application under Section 145(2) of *Negotiable Instruments Act, 1881* has not commenced, shall stand transferred to the court of competent territorial jurisdiction.

As regards petitions [Crl.M.C.No.4109/2014, Crl.M.C.No. 4110/2014 and Crl.M.C.No.4111/2014] filed by petitioners-*Devendra N Kamat, Balchandra S Bakhle and Rashid Khan,* the orders in these petitions are deferred as in Crl.M.C.No.3410/2014, the question of joint trial, which will impact the decision in these three petitions, is coming up for hearing before this Bench on 25th March, 2015. Thus, these three petitions are segregated and be listed for orders on 26th March, 2015.

Consequentially, the above-captioned petitions filed by petitioners-*Neerav J. Shah, Anil D. Kaneria & Anr. and Ahsahan Alam & Anr.,* and applications are allowed in the aforesaid terms.

(SUNIL GAUR)
Judge

MARCH 23, 2015
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