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

*Date of Decision: August 10, 2015*

(i) + **CRL.M.C. 4347/2013 & CrI.M.A.15509/2013**

VMC SYSTEMS LTD. & ORS. .... Petitioners  
Through: Mr. R.K. Prakash and Mr. Hem C.  
Vashisht, Advocates

versus

STATE & ANR. .... Respondents  
Through: Mr. Vinod Diwakar, Additional  
Public Prosecutor for respondent-  
State  
Mr. Pavan Narang and Mr.  
Anupam Prakash, Advocates for  
respondent No.2

(ii) + **CRL.M.C. 4360/2013 & CrI.M.A.15655/2013**

B VENKATRAMANA & ANR. .... Petitioners  
Through: Mr. R.K. Prakash and Mr. Hem C.  
Vashisht, Advocates

versus

STATE & ANR. .... Respondents  
Through: Mr. Vinod Diwakar, Additional  
Public Prosecutor for respondent-  
State  
Mr. Pavan Narang and Mr.  
Anupam Prakash, Advocates for  
respondent No.2

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

**JUDGMENT  
(ORAL)**

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In the above-captioned two petitions, quashing of complaint funder Section 138 of *the Negotiable Instruments Act, 1881* and the Notice framed under Section 251 of Cr.P.C. is sought on identical grounds and so, both these petitions were heard together and by this common judgment, they are being disposed of.

At the hearing, it was vehemently contended that the proceedings arising out of the complaint in question ought not to continue on three counts. Firstly, on the ground that respondent-complainant is foreign firm and is not a legal entity recognized under the Indian law; secondly, on the ground that respondent-complainant is not holder of the cheque in question in due course; and thirdly, on the ground that the complaint in question is barred by time. It was submitted by learned counsel for petitioners that the dishonoured cheque in question as in the name of Punjab Communications Limited and not in the name of respondent-complainant herein.

On the limitation aspect, it was submitted that the dishonoured cheque in question was not presented during the period of limitation. Reliance was placed by learned counsel for petitioners upon decisions in *Sadanandan Bhadran v. Madhavan Sunil Kumar* AIR 1998 SC 3043, *Milind Shripad Chandurkar v. Kalim M.Khan and Another* (201) 4 SCC 275 and *P.K. Koya Moideen v. G. Hariharan* 1996 (86) Comp. Cases 399 (Ker.) in support of above submissions.

On behalf of respondent-complainant, reliance was placed upon decisions in *State of Haryana & Ors. v. Bhajan Lal and Others* 1992 Supp (1) SCC 335, *Rajesh Agarwal v. State & Anr.* 171 (2010) DLT 51, *Punjab & Sind Bank v. Vinkar Sahakari Bank Ltd. & Ors.* (2001) 7 SCC 721, *Bank of India v. State and Ors.* 2010 (199) DRJ 401, *K.R. Indira v. Dr. G. Adinarayana* (2003) 8 SCC 300, *U.Ponnappa Moothan Sons, Palghat v. Catholic Syrian Bank Ltd. and Ors.* (1991) 1 SCC 113, *Sada Vijay Kumar v. State of Maharashtra* in Crl. Appln. No.638/2012 rendered on 18<sup>th</sup> December, 2012, *India Saree Museum v. P. Kapurchand and Anr.* rendered on 4<sup>th</sup> April, 1989 and *Anil Kumar Jaiswal v. State and Anr.* rendered on 23<sup>rd</sup> August, 2006 to submit that an endorsement has been made on the cheque in question by virtue of which respondent-complainant becomes holder of the cheque in question in due course and in this regard, attention of this Court is drawn to petitioners' Communication of 29<sup>th</sup> November, 2012 to respondent-complainant.

It is submitted that the statutory notice was given on 6<sup>th</sup> February, 2013 in respect of the dishonoured cheque of 30<sup>th</sup> November, 2012 and thus, complaint in question is within the period of limitation. As regards respondent-complainant being a legal entity, attention of this Court was drawn to Section 11 of *the Indian Penal Code*. Lastly, it was submitted that the grounds on which quashing of the complaint in question is sought, essentially relate to facts, which are required to be established during the proceedings, which are of summary nature and so, no case for quashing the complaint in question is made out.

Upon considering the submissions advanced by both the sides and on perusal of the impugned Notice under Section 251 of Cr.P.C., the

*Escrow Account Agreement* of 26<sup>th</sup> December, 2007, petitioners' Communication of 29<sup>th</sup> November, 2012 addressed to respondent-complainant, the material on record and the decisions cited, I find that respondent-complainant is a legal entity within the meaning of Section 11 of *the Indian Penal Code*. In view of Clause 6.7 *Escrow Account Agreement* of 26<sup>th</sup> December, 2007 coupled with petitioners' Communication of 29<sup>th</sup> November, 2012, I find that the question of respondent-complainant being the holder of the cheque in question or not, is of fact, which is required to be established before the trial court after respondent-complainant is duly cross-examined.

Regarding the question of limitation, I find that it is a mixed question of law and fact, which cannot be pre-judged in proceedings under Section 482 of Cr.P.C.. Infact, the decisions relied upon by petitioners are of no avail at this stage. However, the evidence on record needs to be scrutinized by trial court at the final hearing in the light of the decision cited.

In view of aforesaid, without commenting upon merits of this case, the above captioned two petitions and the applications are disposed of with liberty to petitioners to urge the pleas taken herein before the trial court at the final stage.

**(SUNIL GAUR)**  
**JUDGE**

**AUGUST 10, 2015**

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