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

Date of Decision: January 07, 2015

+ **CRL.M.C. 5140/2014 & CrI.M.A. 17576/2014**

RATHI ISPAT LTD Petitioner
Through: Mr. Satish Kumar Tripathi,
Advocate

versus

STATE (GOVT OF NCT OF DELHI) & ORS Respondents
Through: Mr. Karan Singh, Additional Public
Prosecutor for respondent-State
Ms. Seema Gupta, Advocate for
respondent No.2-Indian Bank

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

Petitioner is an accused in proceedings under Section 138 of *the Negotiable Instruments Act, 1881* and Notice under Section 251 of Cr.P.C. has been framed against petitioner and his co-accused on 16th July, 2013. Thereafter, petitioner had filed an application under Section 145 (2) of *the Negotiable Instruments Act, 1881*, which was allowed by trial court vide order of 1st August, 2013 and the case was listed for complainant's evidence.

Learned counsel for petitioner had sought an adjournment for

cross-examination of the authorised representative of respondent No.2-complainant and thereafter, had filed an application for transfer of the case to the court of competent territorial jurisdiction while relying upon Apex Court's decision in *Dashrath Rupsingh Rathod v. State of Maharashtra & Anr.* 2014 (9) SCALE 97. Trial court as well as revisional court has declined to transfer the case under Section 138 of *the Negotiable Instruments Act, 1881* on the ground that it has gone beyond the stage of Section 145 (2) of *the Negotiable Instruments Act, 1881*.

Learned counsel for petitioner submits that respondents No.3 to 9 are *pro forma* parties as they are co-accused and no relief is claimed against them in this petition.

At the hearing of this petition, learned counsel for petitioner had drawn the attention of this Court to paragraph No.53 (20) of decision in *Dashrath Rupsingh (supra)* and it was submitted that since the recording of the evidence has not yet begun, therefore, the instant complaint case ought to be transferred to the court having the territorial jurisdiction.

Learned counsel for contesting respondent No.2 supports the impugned orders and submits that after allowing of petitioner's application under Section 145 (2) of *the Negotiable Instruments Act, 1881*, recording of evidence had begun and on the request of petitioner only, the cross-examination of complainant's authorized representative was deferred and so, the instant case is squarely covered by the Apex Court's decision in *Dashrath Rupsingh (supra)* and there is no substance in this petition.

After having heard both the sides and on perusal of the impugned orders, the material on record and the decision cited, it becomes amply

clear from the trial court's order of 6th September, 2014 that the authorized representative of respondent-complainant was tendered for cross-examination but petitioner's counsel had sought deferment on the ground that he had applied for the certified copy of the evidence and so, it cannot be said that the commencement of the evidence has not begun.

In the considered opinion of this Court, there is no patent illegality or infirmity in the orders of the courts below as the dictum of the Apex Court in *Dashrath Rupsingh (supra)* has been correctly applied to the instant case.

This petition and the application are accordingly dismissed while not commenting upon the merits of this case lest it may prejudice either side at trial.

(SUNIL GAUR)
JUDGE

JANUARY 07, 2015

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