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

Decided on : 1st May, 2017

+ CRL.L.P. 51/2017

M/S. CEASEFIRE INDUSTRIES LTD. Petitioner
Through: Mr. Vivek Bhagat, Advocate

versus

STATE & ORS. Respondents
Through: Mr. Tarang Srivastava, APP for
R-1/State

+ CRL.L.P. 52/2017

M/S. CEASEFIRE INDUSTRIES LTD. Petitioner
Through: Mr. Vivek Bhagat, Advocate

versus

STATE & ORS. Respondents
Through: Mr. Tarang Srivastava, APP for
R-1/State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had instituted two complaint cases they having been registered as complaint case nos.07/2/15 and 08/02/15 impleading the second to fourth respondent as accused persons, each case alleging offence having been committed under Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act) respecting two different

cheques they being cheque nos.035145 dated 07.07.2012 and 035146 dated 05.07.2012 each of Rs.2,00,000/- issued against the account of the second respondent herein with ICICI Bank, Okhla Industrial area, phase-1, New Delhi in favour of the complainant company. It is beyond dispute, as proved by clinching evidence at the trial, that the said cheques when presented for collection were returned by the bank with memos indicating reasons for return to be “account blocked”, followed by some further expression which is found smudged and therefore, illegible. Concededly, after the return of the said cheques unpaid by the bank, the complainant issued legal demand notices calling upon the respondents to pay and upon default in payment on their part, complaints were instituted.

2. It appears that after preliminary inquiry, the second to fourth respondents were summoned and put to trial on the basis of notices under Section 251 of the Code of Criminal Procedure, 1973 (Cr. PC) issued and served on 03.10.2016 to which the respondents pleaded not guilty.

3. The evidence was led by the complainant by examining its authorised representative Mr. D.N. Raju (PW-1). The complainant having rested its case in both the matters after the said evidence, statements of the respondents were recorded under Section 313 read with Section 281 Cr. PC and, thereafter, the Metropolitan Magistrate by similar judgments rendered on 03.11.2016 pronounced acquittal. It is the said view which is sought to be assailed by the petitioner in both

these petitions whereby leave to file criminal appeal in each case is sought in terms of Section 378(4) Cr. PC.

4. It appears a number of defences were raised by the respondents in resisting the prosecution for offences under Section 138 N.I. Act in the above mentioned criminal complaint cases, but what has clinched the issue in their favour is essentially the fact that cheques were returned unpaid on account of the account in question having been frozen.

5. It is noted that in the demand notice after the cheques had been returned, the complainant itself described the reasons for such return as “account freezed”. This is what was reiterated by complainant’s witness V.N. Raju in his affidavit submitted with the complaint. When he was examined on fresh affidavit at the trial he reiterated the reason now referring to the remarks in the return memos the same being “account blocked”. The learned Metropolitan Magistrate accepted the said fact as good reason to dismiss the complaints.

6. In the opinion of this court, the view taken by the Metropolitan Magistrate in the two complaint cases cannot be faulted. The provision contained in Section 138 of the N.I. Act makes it clear that it is not every return of a cheque unpaid which leads to prosecution of an offence under the said provision of law. For such purposes, the cheque must have been returned “unpaid” either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank.

7. The bank which returned the cheques unpaid had made it clear that the accounts had been blocked. It is clear that the complainant itself was aware that the accounts had been frozen in terms of directions by some statutory authority. In these circumstances, the reasons for return of the cheques unpaid being not what is envisaged in Section 138 of the N.I. Act, these petitions are devoid of merit and, therefore, dismissed.

R.K.GAUBA, J.

MAY01 , 2017

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