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

+ CRL.L.P. 692/2015

UMA KANT SHARMA

..... Petitioner

Through: Mr. Sanjeev Sagar & Ms. Jasvin
Dhama, Advocates.

versus

SUDHIR TRIPATHI

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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02.02.2017

1. The respondent has been served through publication. Despite service, none appears for the respondent.

2. Accordingly, leave granted.

Crl. Appeal No. 135 /2017 (to be registered and numbered)

3. Let the appeal be registered and numbered.

4. Since the respondent is not appearing despite service of notice, I proceed to judgment.

5. The present appeal is directed against the order dated 28.08.2015,

whereby the learned MM (NI Act), Patiala House Courts, New Delhi District has dismissed the appellant's complaint being CC No.2802/1 titled *Uma Kant Sharma Vs. Sudhir Tripathi* as not being maintainable on account of it being filed beyond limitation.

6. The appellant had preferred the said complaint originally before the learned ACMM-1, Karkardooma Courts, Delhi, which had been taken up for consideration on 20.11.2008. On 15.12.2008, the learned ACMM-I, Karkardooma Courts, Delhi took cognizance of the offence and summoned the accused for 30.01.2009. The proceedings went on before the learned ACMM and were adjourned from time to time.

7. In the meantime, the judgment of the Supreme Court in *Dashrath Rupsingh Rathod Vs. State of Maharashtra & Anr.*, (2014) 9 SCC 129, was delivered, and in pursuance of the said decision, the complaint with its documents were directed to be returned to the complainant on filing certified copies for being filed before the competent Court. Consequently, the appellant had taken the complaint and the documents and filed the same in the Court of Metropolitan Magistrate, Mumbai. The same was registered as Complaint Case No.111/SS/2015.

8. During the pendency of the said complaint, the Negotiable Instruments (Amendment) Ordinance, 2015 was promulgated on 15.06.2015 – the effect whereof was that the complaint had to be transferred to the Court within whose jurisdiction the payee's bank was situated. By the said Ordinance, apart from introduction of sub-Section (2) in Section 142 of the NI Act, Section 142A was inserted. Section 142A(1), as inserted, is relevant

and reads as follows:

“142A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or direction of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.”
(emphasis supplied)

9. Thus, in terms of Section 142A(1), the complaint of the appellant was deemed to be transferred to the Court having jurisdiction under sub-Section (2) of Section 142.

10. Accordingly, the appellant moved an application for transfer of the case in terms of the aforesaid Ordinance. On this application, the learned Metropolitan Magistrate, Mumbai, however, directed that *“the present complaint is required to be returned to the complainant for filing the same before proper Court/ forum within 30 days from the date of this order”*. The operative part of the order reads as follows:

“The complaint along with court fees, if any and a documents produced is hereby returned U/Sec.201 of Cr.P.C. to the complainant for presentation of the same before proper court/ forum.”

11. Consequently, the complainant took the complaint, as returned, and filed the same before the Court of the learned MM, Patiala House Courts, New Delhi District, New Delhi since the bank of the payee/ appellant was situated within the jurisdiction of the said MM.

12. The learned MM, while passing the impugned order has held that the

complaint had been returned to the appellant by the learned Magistrate at Mumbai under Section 201 Cr.P.C. (in pursuance of the Negotiable Instruments (Amendment) Ordinance, 2015).

13. The learned Magistrate also takes notice of the fact that the aforesaid Ordinance neither talks about return of the complaint, nor prescribes any such grace period of 30 days for filing the complaint. The learned Magistrate, however, held that filing of the complaint by the appellant in 2015, in pursuance of the order dated 01.08.2015 of the learned Metropolitan Magistrate, tantamounts to fresh filing and, therefore, he holds that the complaint is barred by limitation.

14. The reasoning adopted by the learned Magistrate in the impugned order is patently laconic and cannot be sustained. A perusal of Section 142A(1) of the Ordinance shows that by force of the said statutory provision, the complaint of the appellant was deemed to have been transferred, i.e. it stood transferred to the Court having jurisdiction under sub-Section (2) of Section 142. What remained to be done by the learned Magistrate at Mumbai, was only to pass ministerial and consequential orders, so that the record of the complaint case was physically transferred to the competent Court. The learned Magistrate, Mumbai could have directed the transmission of the original record of the complaint through one or the other methods. Just because the learned Magistrate, Mumbai may have directed the complainant to himself take the record and file the same before the competent Magistrate, and may have made reference to Section 201 Cr. P.C., it does not mean that the deemed transfer by force of law could be ignored. Merely because the learned Magistrate at Mumbai may have

passed an order directing return of the complaint for filing the same before the proper Court/ forum by resort to Section 201 Cr.P.C., it does not follow that the return of the said complaint could be treated as one under Section 201 Cr.P.C. The Legislature was conscious, while amending the law by the Ordinance in question, that the jurisdiction of the Court where the complaint could be maintained was being altered retrospectively by introducing Sections 142(2) and 142A. The amendment did not leave it to the complainant to resort to Section 201 Cr.P.C. Section 142A(1) was introduced to provide for deemed transfer of the case by a statutory force. Merely because the learned MM at Mumbai may have invoked Section 201 Cr.P.C., and it may have directed return of the complaint for presentation before the proper Court/ forum, it did not mean that the complaint was not deemed to have been transferred.

15. The view taken by the learned Magistrate in the impugned order is pedantic and it has been passed without any regard to the fact that a litigant cannot be made to suffer on account of an erroneous wording of an order, or faulty implementation of the law contained in the Ordinance by the learned MM, Mumbai. The learned MM, Mumbai should have, in compliance with Section 142A(1), directed the transmission of the complaint – which already stood statutorily transferred, to the competent Court as provided for Section 142(2). Rather than doing so, it invoked Section 201 Cr.P.C. and directed return of the complaint for being presented before the proper Court/ forum. The appellant had no role to play in the passing of this order, and could not have been visited with any adverse consequences on account of the same being passed.

16. The aforesaid narration shows that the appellant had been doing all that was required of him – in filing the complaint initially in the year 2008 within the period of limitation; taking back the complaint from the learned MM, Karkardooma Courts, Delhi in pursuance of the decision of the Supreme Court in *Dashrath Rupsingh Rathod* (supra), and; again taking back the complaint from the Court of the learned MM, Mumbai in pursuance of the Ordinance. The appellant could not have been left in lurch by holding that the complaint was barred by limitation, when the complainant had merely complied with the orders of the Court passed from time to time. Reference in this regard may be made to *Japani Sahoo Vs. Chandra Sekhar Mohanty*, (2007) 7 SCC 394.

17. The impugned order is, accordingly, set aside and the complaint of the appellant is restored before the learned MM, Patiala House Courts, New Delhi District, Delhi. The learned MM shall proceed to adjudicate the said complaint on its own merits.



VIPIN SANGHI, J

FEBRUARY 02, 2017

B.S. Rohella