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

Decided on: 25th May, 2017

+ CRL.A. 959/2006

M/S MAYAWALA GASES PVT. LTD. Appellant
Through: Ms. Mala Goel, Advocate with
Mr. Arun Kumar, Advocate

versus

M/S BHAWANI PICTURES Respondent
Through: Ms. Shipra Choudhry,
Advocate

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The appellant had instituted a criminal complaint alleging offence under Section 138 of the Negotiable Instruments Act, 1881 (N.I.Act) having been committed by the respondent, such complaint having been presented on 21.12.2000 before the then Chief Metropolitan Magistrate, Delhi. The said complaint case resulted in preliminary inquiry under Sections 200 and 202 of the Code of Criminal Procedure, 1973 (Cr.P.C.) by the court of Metropolitan Magistrate resulting in issuance of process under Section 204 Cr.P.C. by order dated 18.08.2001. Subsequently, the case stood transferred to the court of Additional Sessions Judge pursuant to the certain directions then issued by this court transferring the jurisdiction over the prosecution of complaint cases under Section 138 of the N.I. Act from the courts of Metropolitan Magistrate to the Sessions courts.

2. While the matter was thus pending on the file of the court of Additional Sessions Judge, the respondent appeared. The proceedings recorded in its wake indicate that, by order dated 17.02.2003, the court of Sessions directed defence evidence to be adduced, this without notice of accusation under Section 251 Cr.P.C., or in terms of summary procedure which could have been applied, having been issued or served on the respondent. Some evidence in defence was adduced. The respondent moved an application seeking recall of the summoning order. The said application which came up for consideration was allowed by the impugned order dated 09.09.2003 resulting in the complaint being dismissed, the net result being that the respondent stood acquitted.

3. The criminal appeal at hand was presented, with leave of this court, challenging the above conclusion of the complaint case.

4. The respondent on being noticed has appeared to resist the appeal. Reliance is placed on *S.K. Bhalla vs. State & Ors.*, 180 (2011) DLT 219, in particular observations (in para 15) to the effect that it is the bounden duty of the trial court to carefully go through the allegations made in the charge sheet/complaint and consider the evidence to come to a conclusion whether or not commission of the offence is disclosed and if the answer is in the negative, the court is bound to discharge the accused. Noticeably, the said observations were recorded against the backdrop of criminal complaint alleging offence punishable under Section 509/199 of the Indian Penal Code, 1860 (IPC). In a prosecution under Section 138 of the N.I. Act, the presumption in Section 139 also has to be borne in mind.

5. Though the impugned order does not say so explicitly, it is clear that the learned court of sessions assumed that it had the power and jurisdiction to revisit and review the summoning order in terms of the decision of the Supreme Court reported as *K.M. Mathew vs. State of Kerala & Anr.*, (1992) 1 SCC 217. But then, by a subsequent decision of a bench of three Hon'ble Judges of the Supreme Court, reported as *Adalat Prasad vs. Rooplal Jindal & Ors.*, (2004) 7 SCC 338, the judgment of *K.M. Mathew* (supra) was overruled. It was held that after issuance of process on the criminal complaint, there was no jurisdiction or power available in the court of Metropolitan Magistrate to review the said order, the only remedy available being by a petition under Section 482 Cr.P.C. before the High Court. This was reiterated by another bench of three Hon'ble Judges of the Supreme Court in *Subramaniam Sethuraman vs. State of Maharashtra & Anr.*, (2004) 13 SCC 324. In identical fact-situation, by similar order, in judgment reported as *Asia Metal Corporation (HUF) vs. State & Anr.*, 130 (2006) DLT 545, a learned Single Judge of this court set aside the order passed to this effect resulting in acquittal of the accused in such proceedings.

6. Aside from the fact that the court of sessions passing the impugned order did not have any jurisdiction of review of the summoning order, it is also noticed that the procedure adopted was against the settled principles. Even if the trial court had invoked its jurisdiction to apply the summary procedure, the trial court could not have commenced so as to reach the stage of defence evidence without first the notice of accusation being served on the person summoned as

an accused under Section 251 Cr.P.C. if the procedure adopted was that of summons trial, or under Section 263 Cr.P.C., if the summary procedure had been applied. Further, before the case could be taken to the stage of defence evidence, the complainant was entitled, in law, to lead evidence in support of its case, only whereafter the turn of the person accused to adduce evidence would come, that too after his statement under Section 313 Cr.P.C. or under Section 281 Cr.P.C. had been recorded wherein he would have had the liberty of explaining the incriminating facts and circumstances that would have come on record through the complainant's evidence.

7. No such procedure as above was followed. Therefore, the impugned judgment cannot be upheld. It is set aside. In the result, the proceedings arising out of the complaint case referred to above stand revived on the file of the trial court, to be taken up further from the stage where the case was when the impugned order was passed.

8. On the date the impugned order was passed, the National Capital Territory of Delhi was treated as one metropolitan area or sessions division. It has since been divided into eleven metropolitan areas or sessions divisions. Going by the averments in the complaint, the jurisdiction would now vest in the court of Chief Metropolitan Magistrate, Central District at Tis Hazari Courts, Delhi.

9. The trial court record with the copy of this order shall be sent to the court of Chief Metropolitan Magistrate, Central District at Tis Hazari Court, where the parties would appear on 12th July, 2017.

10. The Chief Metropolitan Magistrate, in his discretion may keep the matter on his own board or allocate to any other Magistrate under his control.

11. Needless to add, given the old pendency of this matter, all endeavour shall be made to expedite the proceedings to take the case to early adjudication.

MAY 25, 2017
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R.K.GAUBA, J.

