

\$~19

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

% *Date of Decision : 18.09.2017*

+ **W.P. (CRL.) 2008/2017**

RANDEEP KAUR Appellant
Through: Mr. Gurmeet Singh, Advocate
with Ms. Preeti, Advocate

versus

AYUSH SIBAL Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (Oral)

1. This Writ Petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (in short 'Code') seeking speedy trial of the Complaint Case No. 633344/16 filed under Section 138 of the Negotiable Instrument Act, 1881 (in short 'NI Act').
2. The petitioner filed a complaint under Section 138 of the NI Act against the respondent. Cognizance of this complainant was taken by the learned Metropolitan Magistrate-02 Karkardooma Court vide order dated 29.04.2014.

3. Pursuant to the order dated 18.07.2017 of this court, a report dated 23.08.2017 has been received from concerned Metropolitan Magistrate.
4. Learned counsel for the petitioner had argued that according to Section 143(3) of the NI Act, 1881, all trials under this Act are to be conducted as expeditiously as possible and an endeavour has to be made to conclude the trial within six months.
5. He further relied upon the judgment of the Hon'ble Supreme Court in **Indian Bank Association and Others v Union of India and Others (2014) 5 SCC 590** where the following guidelines were laid down:-

“Directions

23. Many of the directions given by the various High Courts, in our view, are worthy of emulation by the criminal courts all over the country dealing with cases under Section 138 of the Negotiable Instruments Act, for which the following directions are being given:

23.1. The Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinise the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

23.2. The MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. The court, in appropriate cases, may take the assistance of the police or the nearby court to serve notice on the accused.

For notice of appearance, a short date be fixed. If the summons is received back unserved, immediate follow-up action be taken.

23.3. The court may indicate in the summons that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, the court may pass appropriate orders at the earliest.

23.4. The court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 CrPC to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for recalling a witness for cross-examination.

23.5. The court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The court has option of accepting affidavits of the witnesses instead of examining them in the court. The witnesses to the complaint and the accused must be available for cross-examination as and when there is direction to this effect by the court.

24. We, therefore, direct all the criminal courts in the country dealing with Section 138 cases to follow the abovementioned procedures for speedy and expeditious disposal of cases falling under Section 138 of the Negotiable Instruments Act. The writ petition is, accordingly, disposed of, as above.”

6. I have heard the learned counsel for the petitioner.
7. There is no doubt that the guidelines laid down by the **Hon’ble Supreme Court in Indian Bank Association’s case (supra)**

and the language of Section 143(3) point to the intent of the **Hon'ble Supreme Court** and the legislature respectively to make sure that cases under then NI Act are disposed of as expeditiously as possible. The law laid down by the Apex Court in **Indian Bank Association (Supra)** is not in dispute. Admittedly, a circular was issued by this Court on administrative side directing the subordinate Courts to make every endeavour to dispose of such cases in a time bound manner.

8. This Court in **Sharda Ma Enterprises Pvt. Ltd. V State (Govt. of NCT of Delhi) (2016) SCC OnLine Del 2282** while dealing with an identical petition for issuance of a writ for expeditious trial of a complaint filed under the NI Act held that such a prayer could not be allowed due to a large pendency of cases with Metropolitan Magistrates and a shortage of Metropolitan Magistrates itself. The Court further held that allowing a case to be taken up before its turn would be unfair to the litigants who have been patiently waiting as per their turn. Para 5 to 7 of the judgment reads as under:-

“5. I have gone through the arguments advanced and the ratio of judgments cited. There is no dispute with regard to law propounded in the above referred judgments that the complaint under Section 138 of the N.I. Act is a summary trial and all efforts must be made by the Courts conducting trial to dispose of the matter as expeditiously as possible. The law propounded in *Indian Bank Association's case* (supra) is also not in dispute. There is also no dispute about the Circular issued by this Court

directing the Courts below to make every possible endeavour to dispose of the cases in time bound manner.

6. But this Court cannot lose sight of the fact that the Courts of Magistrates are already over burdened with thousands of cases. Every day, number of new cases are assigned to almost every Court. The Judge holding the Court is to take up the cases/matters as per his diary. The litigant has no right to seek the disposal of his case on priority basis when the other matters are pending and the dates are given as per the diary and roster of the concerned Magistrate.

7. In my view, jurisdiction under Section 482 Cr.P.C. is to be exercised to prevent the abuse to the process of law and to secure the ends of justice which the petitioner has failed to demonstrate in the instant case. This Court is of the considered opinion that the petitioner has failed to make out any case and this is not a fit case to exercise the jurisdiction under Section 482 Cr.P.C.”

9. The concerned Metropolitan Magistrate in her report dated 23.08.2017 submitted to this Court had clearly stated that the accused remained unserved till the last date of hearing i.e. 05.08.2017. She had also brought to the Courts notice that in her Court there is a pendency of around 4300 cases out of which only 125 are more than 5 years old and around 50 to 65 cases are listed daily. It is also noticeable from the report that priority is being given to cases which are more than 5 years old, cases in which the accused is in Judicial Custody and cases in which one of the parties is a senior citizen. This Court cannot lose sight of the fact that the Metropolitan Magistrates in Delhi are already

overburdened with cases due to a large pendency of cases as well as due to shortage of Metropolitan Magistrates.

10. The copies of orders passed on the complaint by the learned MM reflect that complaint was filed on 29.04.2014 and on the same day the accused was ordered to be summoned. On 21.08.2014, due to judgment of Apex Court dated 01.08.2017 in **Dasrath Roop Singh Rathore v State of Maharashtra & Anr. (2014) 9 SCC 129** complaint was returned to the complainant for its presentation before the competent court of jurisdiction. The petitioner filed Crl.M.C. 5650/2014 in this Court which was dismissed as withdrawn on 19.01.2016. The petitioner filed an application on 10.05.2016 before the learned CMM (East) for transfer of the complaint. On the next date i.e. on 19.05.2016, the complaint was ordered to be transferred to South-East District through learned District & Sessions Judge (East). On 28.05.2016, learned District & Sessions Judge (South-East) marked the complaint to learned CMM (South-East), Saket Courts, New Delhi, who assigned it to learned MM-03 (South-East), Saket, New Delhi. The accused has so far not been served with the summons despite the order of learned MM that petitioner may accompany the process server. It appears that correct particulars/address of the accused have not been furnished in the complaint.
11. The jurisdiction under Section 482 of the Code is to be exercised by this Court (i) to give effect to any order under this

Code, or (ii) to prevent abuse of the process of any Court, or (iii) otherwise to secure the ends of justice.

12. However, in the light of facts and circumstances of the case, the petitioner has failed to justify any of the circumstances to invoke Section 482 of the Code in the present case. Therefore, this court does not feel that the petitioner has made out a fit case for the exercise of its powers under Section 482 of the Code.
13. The petition is accordingly dismissed.

SEPTEMBER 18, 2017

//

**(VINOD GOEL)
JUDGE**



सत्यमेव जयते