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

+ CRL.M.C. 3697/2017

VINAY CHABRA

..... Petitioner

Through: Mr. S. Chakraborty and Mr. Nikhil
Gautam, Advs.

versus

ASHUTOSH GANGWAR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **22.11.2017**

By this petition under Section 482 of the Code of Criminal Procedure, 1973, petitioner has prayed for quashing of Criminal Case No. 5007195/2016 filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') pending in the court of Metropolitan Magistrate-04 (N.I. Act), South West District, Dwarka Courts, New Delhi.

Learned counsel for the petitioner has contended that vide order dated 17th October, 2014, learned Metropolitan Magistrate had ordered for return of complaint along with original documents to complainant with the directions to file it in the court of competent jurisdiction, in view of the law laid down in Dashrath Roopsingh Rathod vs. State of Maharashtra & Anr.

MANU/SC/0655/2014. Complainant (respondent herein) did not take back the complaint. Instead an application was filed for revival of the complaint case. The application was allowed vide order dated 5th November 2016 and complaint was transferred to Dwarka Courts. This order amounts to review of the earlier order. It is further contended that petitioner was not impleaded in the complaint initially nor any averment was made against him to show that he was responsible for day to day affairs of M/s V.C. Catering Pvt. Ltd., which had issued the cheque. In absence of any averments regarding role of the petitioner, he could not have been summoned and tried for the offence committed by the company, by taking aid of Section 141 of the Act. On these grounds, it is contended that afore-mentioned complaint case is liable to be quashed.

Per contra, learned counsel for the respondent has contended that complaint case was filed against M/s V.C. Catering Pvt. Ltd. through its director Venketesh Mohan, who was impleaded as an accused. Petitioner is one of the directors of M/s V.C. Catering Pvt. Ltd. The cheque has been signed by the petitioner as an authorised representative of M/s V.C. Catering Pvt. Ltd. Petitioner appeared before the trial court for an on behalf of M/s V.C. Catering Pvt. Ltd. He himself stated that Venketesh Mohan had

expired. Accordingly, an application was filed for substitution of the petitioner's name as an accused along with amended memo of parties. The said application was allowed and amended memo of parties was taken on record. Thereafter, petitioner continued to participate in the proceedings. He admitted his signatures on the cheque. Notice was framed against him wherein he has also taken a defence that he had given blank signed cheque to his partner Venketesh Mohan. He was not aware as to how respondent procured the cheque in question. As per the petitioner, Venketesh Mohan had given cheque to the respondent which has been misused by the respondent. He has also taken a plea that he had given blank signed cheque. He further contended that in view of the amended Section 142 of the Act, jurisdiction of Dwarka Court was attracted, accordingly, complaint was not taken back by the respondent; instead an application was filed for sending the complaint case to Dwarka Courts.

I have considered the rival contentions of the learned counsels for the parties and I am of the view that no case is made out for quashing of the complaint by this Court in exercise of its inherent jurisdiction under Section 482 Cr.P.C. Even though, petitioner was not initially impleaded as an accused in the complaint case yet the fact remains that he himself appeared

before the trial court and stated that accused Venketesh Mohan, who was impleaded as director of M/s V.C. Caterers Pvt. Ltd., had expired. He also admitted his signatures on the cheque. He admitted that he was Director of the said company. Accordingly, he was substituted as an accused. Notice has already been framed against him wherein he has stated as under:-

“NOTICE UNDER SECTION 251 Cr.P.C.

It is alleged against you Vinay Chabbra S/o Late Sh. D.R. Chabra R/o 6/16, East Patel Nagar, New Delhi – 110008 aged about 65 years that you issued one cheque bearing no. 002587 dated 01.09.2011, amounting to Rs.2,39,112/- drawn on Axis Bank Ltd., East Patel Nagar, New Delhi, in favour of complainant Sh. Ashutosh Gangwal in discharge of your legally enforceable liabilities. On presentation at the complainant's bank the cheque got dishonoured for the reason “Funds Insufficient”. Thereafter, a legal demand notice u/s 138 of the Negotiable Instruments Act was served upon you and you failed to make the payment within the statutory period and thereby committed an offence punishable under section 138 of N.I. Act within my cognizance. I hereby direct you be tried for the offence U/S 138 of the N.I. Act.

Sd/
Paridhi Gupta
MM/Dwarka
22.07.2017

The notice had been read over and explained to the accused in vernacular and he is questioned as follows :-

Q.1 Do you plead guilty or claim trial?

Ans. I plead not guilty to the offence u/s 138 NI Act and claim trial.

Q.2 Do you have any defence to make?

Ans. For the purposes for carrying out business, I had given blank signed cheques to my partner Venketesh Mohan. I do not know as to how the complainant procured the cheque in question. Perhaps Venketesh Mohan gave the cheque to the complainant who has misused the same. As such, I owe no liability towards the complainant as there was no agreement between me and the complainant.

Q.3 Do you know the complainant?

A. No. I got acquainted with the complainant pursuant to the filing of the present case.

Q.4 Do you admit your signatures on cheque in question?

A. Yes.

Q.5 Did you fill the particulars on the cheque in question including the date and the name of the payee?

A. No. I had given a blank signed cheque to Venketesh Mohan.

Q.6 Did you receive the legal notice from the complainant?

A. No.

Q.7 Do you have anything else to say?

A. No.”

It is noted that complaint was not dismissed for want of jurisdiction.

It was ordered to be returned for presenting it in the court of competent jurisdiction. In the meanwhile, sub-Section 2 of Section 142 of the Act, was amended, which reads as under:-

“142. Cognizance of offences.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).-

(a) no court shall take cognizance of any offence punishable

under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction –

(a) If the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) If the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation – For the purpose of clause (a), where the cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

Accordingly, application was filed for revival and sending the complaint to court of competent jurisdiction, within NCT of Delhi. This does not amount to review of the earlier order.

For the foregoing reasons, petition is dismissed. Miscellaneous

application is disposed of as infructuous.

A.K. PATHAK, J.

NOVEMBER 22, 2017

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