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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 27th August, 2018

\+ CRL.M.C. 2653/2011 and Crl. M.A. 19114/2014 and 15474/2017

NARESH NAGPAL ..... Petitioner

Through: Mr. Manik Dogra, proxy counsel

versus

SAMIR JASUJA ..... Respondent

Through: Mr. Siddharth Yadav and Mr. Mohit Daulatani, Advocates

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

ORDER (ORAL)

1. On the criminal complaint (no.3132/1/2007) instituted by the respondent, after a preliminary inquiry, the Metropolitan Magistrate by order dated 27.02.2008 summoned the petitioner as accused for offence under Section 138 of the Negotiable Instruments Act, 1881. The present petition invoking the inherent power of this court under Section 482 of the Criminal Procedure Code, 1973 (Cr.PC) was filed seeking quashing of the said order and the proceedings arising out of the criminal complaint, it having been presented in August 2011 on the plea that the knowledge about the issuance of the process was gained only after non-bailable warrants had been issued on 05.02.2011.

2. The petition has been resisted by the respondent (complainant).

3. The copy of the criminal complaint leading to the summoning order being passed would show that the petitioner had issued a cheque dated 21.09.2007 against his account with Smith Barney Citibank, New Jersey, USA in the sum of US $ 250,000. The cheque was statedly handed over by the petitioner (accused) to the respondent (complainant) at his residence at A-5, Maharani Bagh, New Delhi. It was presented by the complainant to his banker, HDFC Bank, Vasant Vihar, New Delhi on 22.09.2007 but was returned unpaid with remarks "refer to drawer". As per the case of the respondent/complainant, he had issued a notice demanding the payment of the cheque amount but the petitioner (accused) failed to abide by the said demand, this constituting the offence under Section 138 of the Negotiable Instruments Act, 1881.

4. It is the contention of the petitioner that the proceedings before the trial court are in the nature of abuse of the process, the court in India having no jurisdiction in the matter since the cheque was issued against a bank account in United States of America. It is also the contention of the petitioner that the claim about A-5, Maharani Bagh, New Delhi, being the residence of the complainant is false. The petitioner also contends that mere presentation of the cheque in a bank at a particular place (Delhi) would not confer jurisdiction on the court at that place. The contention of the petitioner further is that the cheque in question would be governed by the substantive law of USA.

5. While this petition had been pending, on 10.12.2014, it was submitted on behalf of the petitioner that the jurisdiction of the court at Delhi stood ousted, in view of the ruling of the Supreme Court in *Dashrath Rupsingh Rathod vs. State of Maharasthra and Anr, (2014) 9 SCC 129*, this presumably with reference to the averment of the complainant before the court below that the cheque had been presented for collection by the bank at New Delhi. The matter, remained pending, it having been adjourned from time to time, no interest having been shown in effective hearing.

6. During the pendency, however, on account of non-appearance of the petitioner before the Metropolitan Magistrate, by order dated 26.08.2017, assurance on his behalf that he would appear on the date next fixed was recorded with the caution that if he were to fail to appear, coercive action will be taken. It has been submitted by the counsel for the respondent (complainant), and is conceded by the counsel for the petitioner that, by proceedings recorded on 22.05.2012, the criminal complaint was taken to the stage of trial with formal notice under Section 251 Cr. PC having been issued and served on the petitioner, his plea of not guilty alongwith his defence having been duly recorded, his prayer for liberty to cross-examine the complainant under Section 145(2) of the Negotiable Instruments Act, 1881 also having been granted and the case being taken to the next stage for such opportunity to be availed. It may be added that the proceedings of 26.08.2017, as were noted in the order dated 15.09.2017, also show that for such purposes of cross-examination of the complainant by the

petitioner, the matter was adjourned as "last opportunity" for 16.09.2017. The proceedings recorded on 15.09.2017, also show that the petitioner had indicated that compromise talks were underway at that stage.

7. The averment of the petitioner that the address of Maharani Bagh, New Delhi was falsely shown as the place of handing over of the cheque cannot be accepted on its face value, not the least in proceedings under Section 482 Cr. PC. The submissions to that effect at the most give rise to a question of fact which would have to be adjudicated upon on the basis of evidence led during the trial. The reliance on *Dashrath Rupsingh Rathod* (supra), has lost its sheen in view of the amendment of the law by the Negotiable Instruments (Amendment) Act, 2015 whereby sub-Section (2) of Section 142 and Section 142-A were inserted in the legislation, this apparently to overcome the legal position "*declared*" in the said case [*Dashrath Rupsingh Rathod* (supra)]. The law, as prevails post the amendment of the statute, has been explained by the Supreme Court in *Bridgestone India Pvt. Ltd. vs. Inderpal Singh, JT 2015 (12) SC 217; (2016) 2 SCC 75*. *Prima facie,* the presentation of the cheque in New Delhi for collection would ordinarily confer the jurisdiction on the court of the Magistrate at New Delhi.

8. Given the progress that has been made in the trial of the criminal case before the court of the Metropolitan Magistrate, the questions raised by the petition at hand ought to be left to be

adjudicated upon in such proceedings. This court declines to interfere in exercise of the power under Section 482 Cr. PC.

9. Thus reserving the contentions of the petitioner vis-à-vis the allegations made against him in the criminal complaint under Section 138 of the Negotiable Instruments Act, 1881, the petition and the applications filed therewith are disposed of.

R.K.GAUBA, J.

AUGUST 27, 2018
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HIGH COURT OF DELHI
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