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

\+ CRL.M.C. 1566/2016 & CRL.M.A. 6688/2016

INDIA INFOLINE LIMITED ..... Petitioner

Through: Mr. Dayan Krishnan, Sr. Adv. with Mr. Rajiv Bhatnagar & Mr. Ratnil Chauhan, Advs.

versus

STATE (NCT) OF DELHI AND ANR ..... Respondents

Through: Mr. Ravi Nayak, APP for the State. Mr. Siddharth Aggarwal & Mr. Ravi Kapoor, Advs. for R-2.

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

O R D E R

% 06.09.2018

The petitioner is the complainant in case (86/8/2012) involving offence under Section 138, Negotiable Instruments Act, 1881 pending on the file of Metropolitan Magistrate where second respondent herein was one of the accused persons who were summoned. While challenging the notice under Section 251 of the Code of Criminal Procedure, 1973 (Cr.P.C.) in the court of Sessions by Crl. Rev. 147/2015, the issue of limitation was raised. The revisional court remitted the said issue for consideration and adjudication by the trial court by judgment dated 19.02.2016, though making certain observations to the effect that there was a delay of six days in filing the complaint assuming in this context that the notice of demand which had been issued on 28.06.2008 had been served on the said respondent on the same date.

The learned counsel for the second respondent argued that the petition

at hand under Section 482 Cr.P.C. challenging the said order of the revisional court ought not be entertained inasmuch as the issue is still open before the Metropolitan Magistrate. But the learned senior counsel for the petitioner submitted that given the observations which have been recorded by the revisional court, the Metropolitan Magistrate may feel bound by the same and take an erroneous decision. The counsel for the second respondent submitted in reply that he agrees that the observations of the revisional court are tentative in nature and cannot be treated as conclusive or binding.

It is trite that the observations of the revisional court against the above backdrop cannot be construed as clinching. The Magistrate who will be called upon to take a decision on the issue of limitation which has been raised, *albeit* belatedly, will take a call without feeling influenced by any expression of opinion on the said subject in the revisional court's order.

The learned senior counsel submitted at this stage that while he seeks permission to withdraw the present petition in view of the observations which have been recorded above, it may also be taken on record that the petitioner – complainant of the case – intends to move the Metropolitan Magistrate by an application seeking transfer of the criminal complaint case to Mumbai. Upon such application being moved, needless to add, the Metropolitan Magistrate will hear both sides and pass an order in accordance with law.

R.K.GAUBA, J

SEPTEMBER 06, 2018
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