

\$~30-33, 35 and 36

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

***Decided on: 16<sup>th</sup> July, 2018***

+ CRL.M.C. 1486/2016 & Crl. M.A. 6366-6367/2016

SANJAY JAIN

..... Petitioner

Through: Mr. Vijay Aggarwal, Mr. Shekhar Pathak, Shailesh Pandey, Hemlata Kharayat, Barkha Rastogi, Ms. Chandni Kumari, Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr. Ravi Nayak, APP for the State

Ms. Archana Lakhotia and Mr. Ravinder Parsad, Advocates for R-2

+ CRL.M.C. 1490/2016 & Crl. M.A. 6374/2016

SANJAY JAIN

..... Petitioner

Through: Mr. Vijay Aggarwal, Mr. Shekhar Pathak, Shailesh Pandey, Hemlata Kharayat, Barkha Rastogi, Ms. Chandni Kumari, Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr. Ravi Nayak, APP for the State

Ms. Archana Lakhotia and Mr. Ravinder Parsad, Advocates for R-2

+ CRL.M.C. 3159/2016 & CrI. M.A. 13530/2016

SANJAY JAIN

..... Petitioner

Through: Mr. Vijay Aggarwal, Mr.  
Shekhar Pathak, Shailesh Pandey, Hemlata  
Kharayat, Barkha Rastogi, Ms. Chandni  
Kumari, Advocates

versus

STATE & ANR

..... Respondents

Through: Mr. Akshai Malik, APP for the  
State

Ms. Archana Lakhotia and Mr. Ravinder  
Parsad, Advocates for R-2

+ CRL.M.C. 3160/2016 & CrI. M.A 13532/2016

SANJAY JAIN

..... Petitioner

Through: Mr. Vijay Aggarwal, Mr.  
Shekhar Pathak, Shailesh Pandey, Hemlata  
Kharayat, Barkha Rastogi, Ms. Chandni  
Kumari, Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr. Akshai Malik, APP for the  
State

Ms. Archana Lakhotia and Mr. Ravinder  
Parsad, Advocates for R-2

+ CRL.M.C. 1629/2016 & CrI.M.A. 6944/2016

SANJAY JAIN

..... Petitioner

Through: Mr. Vijay Aggarwal, Mr.  
Shekhar Pathak, Shailesh Pandey, Hemlata  
Kharayat, Barkha Rastogi, Ms. Chandni  
Kumari, Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr. Akshai Malik, APP for the  
State

Ms. Archana Lakhotia and Mr. Ravinder  
Parsad, Advocates for R-2

+ CRL.M.C. 1633/2016 & CrI.M.A. 6956/2016

SANJAY JAIN

..... Petitioner

Through: Mr. Vijay Aggarwal, Mr.  
Shekhar Pathak, Shailesh Pandey, Hemlata  
Kharayat, Barkha Rastogi, Ms. Chandni  
Kumari, Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr. Ravi Nayak, APP for the  
State

Ms. Archana Lakhotia and Mr. Ravinder  
Parsad, Advocates for R-2

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER (ORAL)**

1. The petitioner is facing criminal prosecution for offences under Sections 138 of the Negotiable Instruments Act, 1881 in criminal complaint cases bearing nos.117/1, 118/1, 119/1, 120/1,

85/1 & 86/1 on the complaint of the second respondent in the court of the Metropolitan Magistrate. He had moved an application under Section 326 (3) of the Code of Criminal Procedure, 1973 (Cr. PC) to seek the trials to be conducted *de novo* on the ground that the evidence recorded by the previous presiding officer could not be availed of on account of he having been transferred, the procedure applicable to such prosecutions under Section 138 of the Negotiable Instruments Act attracting the summary trial in terms of Section 143. His prayer was, however, rejected by the orders which are impugned by the petitions at hand.

2. Having heard the learned counsel on both sides and having gone through the records, this court finds the petitions to be wholly frivolous. The learned Magistrate has noted in the impugned order, *inter alia*, that the procedure followed for the trial of these cases is not of summary trial that is generally applicable in terms of the main provision contained in Section 143(1) but that of a summons trial in as much as the process had commenced with notices under Section 251 Cr. PC being issued and served. Pertinent to note here that the second proviso to Section 143(1) empowers the Magistrate to adopt the summons trial procedure instead of the summary trial procedure. The ruling of the Supreme Court reported as *J.V. Baharuni & Anr. Vs. State of Gujarat and Anr.*, 2015 (1) JCC (N) 43; (2014) 10 SCC 494 guides that there is no strait-jacket formula for trial of the offences under the Negotiable Instruments Act to be held, the law relating thereto being flexible given the discretion to the prudent judicial mind to try the case summarily or otherwise.

3. Since the procedure followed is of summons trial, the restrictions in Section 326 Cr. PC do not get attracted. The plea is misconceived.

4. The petitions and the applications filed therewith are dismissed.

**R.K.GAUBA, J.**

**JULY 16, 2018**

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