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

+ CRL.M.C. 2895/2018 and CrI.M.A.10254-10255/2018

MADURA COATS PVT. LTD

..... Petitioner

Through: Mr. Dayan Krishnan, Senior
Advocate with Mr. Sandeep Vishnu,
& Mr. Aabhas Kshetarpal, Advs.

versus

H.C.SALES DEPOT & ANR

..... Respondents

Through: Mr. Satinder S. Gulati, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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25.10.2018

The petitioner had instituted a criminal case (CC No.53499/2016, now numbered as 1887/2018) against the respondents alleging offence punishable under Section 138 of the Negotiable Instruments Act, 1881 which is pending trial on the file of Ms. Namrita Aggarwal, Senior Civil Judge/Metropolitan Magistrate Patiala House Court, New Delhi. The respondents had also filed a criminal case, it presently being registered as CC No.55250/2016, now pending on the file of Ms. Pragati, Metropolitan Magistrate, New Delhi at Patiala House Courts Complex. The case of the respondents against the petitioner alleges offences punishable under Sections 420/465/468/469/471/474 IPC.

It appears that cognizance was taken in each case and summons were issued after preliminary inquiry against the opposite party by the concerned Metropolitan Magistrate. It is pointed out that the respondents had moved

transfer petition (Crl.) No.40/2014 praying for both the cases to be brought before the same court primarily on the ground that each arose out of the same transaction. The said prayer was granted by order dated 21.08.2014. On account of some administrative re-adjustment of work the two cases over the period have shifted to different courts once again.

Be that as it may, the case under Section 138 of the Negotiable Instruments Act, 1881 had reached the stage of final arguments when the petitioner moved application under Section 311 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeking opportunity to lead additional evidence this inclusive of certain documents pertaining to the cross case, certain invoices relied upon and, some documents relating to VAT liability.

The prayer was resisted by the respondents on the ground of delay. The objection was upheld and the Metropolitan Magistrate declined the opportunity. The petitioners challenged the said order before the court of Sessions by Criminal Revision Petition No.118/2018 which endorsed the view taken by the Metropolitan Magistrate. The said orders are under challenge by the present petition filed before this court invoking its inherent power and jurisdiction under Section 482 Cr.P.C.

After some hearing, the learned counsel for the respondents fairly conceded that since both the cases arising out of the same transaction, the prayer for an opportunity for additional evidence in the nature mentioned in the application may be granted to the petitioner, though the respondents reserving the right to take objection to the relevancy or import or effect of such additional evidence in the context of accusations under Section 138 of the N.I. Act, 1881.

While the learned senior counsel for the petitioner agrees to this, counsel on both sides are also in agreement with each other that both the cases will have to be brought back to the same court and decided expeditiously so that further delay does not entail and further that they being cross cases should be decided by the same court at the same time.

Ordered accordingly.

Given the fact that the case under Section 138 of the N.I. Act, 1881 is pending before a court which is primarily dealing with civil jurisdiction, the judicial work relating to prosecutions under Section 138 of the N.I. Act, 1881 being additional to the charge, the said case is withdrawn from the said court and made over to the court of Ms. Pragati, Metropolitan Magistrate, New Delhi at Patiala House Courts Complex, where both the cases shall proceed further simultaneously though from the stages where they presently are, this taking care of the directions hereby given for opportunity for additional evidence to be given under Section 311 Cr.P.C. to the petitioner.

It is hoped and expected that the concerned Metropolitan Magistrate will proceed with both the cases with such expedition as is requisite. Both the parties are also expected to cooperate with the trial court to ensure that no date of hearing is wasted.

The petition and the applications filed therewith stand disposed of.

R.K.GAUBA, J.

OCTOBER 25, 2018

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