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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 3325/2018
M/S ANCHOR ELECTRICALS PVT. LTD Petitioner
Through: Mr. Sheikh Imran Alam, Adv.
versus

M/S GALAXE CONSTRUCTIONS & ORS Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **12.07.2018**

Petitioner filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) in the court of Metropolitan Magistrate (MM), Andheri, Mumbai (Maharashtra). After recording pre-summoning evidence learned MM issued summons to the accused. Thereafter, bailable warrants were ordered to be issued but had remained unserved. In the meanwhile, in view of the law laid down in Dashrath Rupsingh Rathore Vs. State of Maharashtra MANU/SC/0655/ 2014 , learned MM, Mumbai ordered thus: 'complaint and other documents are hereby returned to the complainant for filing it before the proper court'. This order was passed by the learned MM as Mumbai court was divested of the territorial jurisdiction in view of the law laid down in Dashrath (Supra).

Accordingly, petitioner filed the complaint in the court of learned

MM, Delhi. Learned Link Metropolitan Magistrate passed following order

:-

“Fresh complaint case u/s 138 NI Act received by way of assignment. It be checked and registered.

Learned Presiding Officer is on leave today.

Present: Sh. Abhinandan Das, AR of the compensation with counsel Ms. Vernika Tomar.

At request, put up on 21.03.2015 for consideration.”

Thereafter, vide order dated 21st March, 2015 concerned MM ordered for issuance of court notice to the respondent on the application for condonation of delay, filed by the petitioner. The said court notice remained unserved. In the meanwhile, another development took place. Sub Section 2 of Section 142 of the Act was inserted by way of Negotiable Instruments (Amendment) Ordinance, 2015, which reads as under:-

“(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 purposes of clause (a), where a 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.”

In view of the Sub Section 2 of Section 142 of the Act, learned MM, vide order dated 3rd October, 2016, ordered for placing the matter before the learned CMM (East), Delhi for the purpose of transferring the matter to court of learned CMM having jurisdiction over the police station Chandivali, Mumbai. Vide order dated 4th October, 2016 learned CMM (East) Delhi ordered for forwarding the file to the court of CJM dealing with the matter relating to police station Chandivali, Mumbai (Maharashtra).

It appears that file was transmitted to CJM, Chandivali, Mumbai but the same was received back with the remarks “address furnished was incorrect”. Accordingly, learned CMM, Delhi sent back the matter to concerned MM for ascertaining the correct particulars from the complainant (petitioner). Thereafter, matter was taken up by the MM-01 (East), Karkardooma Court, Delhi and court notice was issued to petitioner. However, court notice remained unserved as is evident from a perusal of order dated 4th March, 2017 passed by the learned MM, Delhi by which matter was adjourned to 8th May, 2017, on which date matter was dismissed in default as complainant had remained unrepresented.

Petitioner filed a Revision Petition under Section 397 Cr.P.C. before the learned Sessions Judge, East District, Karkardooma Court, Delhi which

was assigned to the Additional Sessions Judge. Vide order dated 7th April, 2018 learned Additional Sessions Judge has dismissed the revision petition by holding that dismissal of complaint amounted to acquittal of accused within the meaning of Section 256 Cr.P.C., thus, revision was not maintainable. Learned Additional Sessions Judge placed reliance on Kalpana Tyagi Vs. Sneha Lata Sharma (2003) 104 DLT 127 and Ravi Sharma Vs. State (NCT of Delhi) & Anr. ILR (2010) I Delhi 167 for arriving at this view.

I am of the opinion that the view taken by the learned Additional Sessions Judge is not correct in the facts and circumstances of this case. Facts involved in the cases relied upon by the learned Additional Sessions Judge are different. In this case, complaint was filed before the MM, Andheri, Mumbai. Thereafter, complaint was returned to petitioner for filing the same in the court of competent jurisdiction in view of the law laid down in Dashrath Rupsingh Rathore (Supra). Accused was neither served nor appeared in Mumbai court. It is not the case that matter was transferred to Delhi and the parties including the accused were directed to appear before the transferee court.

Learned MM, Delhi even did not issue summons to respondents

(accused) in the complaint case after same was filed. Petitioner filed an application for condonation of delay, notice whereof was issued which even remained unexecuted. Accused was neither summoned in the complaint nor appeared in court. Accordingly, dismissal of the complaint would not amount to acquittal of accused within the meaning of Section 256 Cr.P.C.

Learned counsel for the complainant submits that after the complaint was ordered to be transferred to Mumbai court by the learned MM, Delhi the file was placed before learned CMM (East), Delhi, who ordered for remitting the file to competent court of jurisdiction in Mumbai, but the file was returned as address was not correct. Petitioner was not aware about the events which took place in the absence of petitioner. After the file was received from Mumbai court learned CMM, Delhi assigned the same to the concerned MM, Delhi for verifying the correct address from the complainant (petitioner). Court notice was issued to petitioner but the same remained unserved as is evident from a perusal of order dated 8th May, 2017 passed by the learned MM, Delhi.

In my view, for this reason, petitioner could not have appeared before the MM on 8th May, 2017. Non appearance on the part of petitioner thus can be said neither intentional nor wilful. Non appearance appears to be for the

circumstances beyond the control of petitioner. For the foregoing reasons, petition is allowed and impugned order is set aside and matter is remanded back to the concerned court of Metropolitan Magistrate, Delhi to proceed with the matter in accordance with law. Petitioner to appear before the trial court on 1st August, 2018.

Present petition under Section 482 Cr.P.C. is disposed of in the above terms.

A.K. PATHAK, J.

JULY 12, 2018

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