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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 05th October, 2018

+ CRL.M.C. 1271/2015 and Crl. M.A. 4630/2015

**M/S T G LEISURE & RESORTS (P) LTD
& ORS**

... Petitioners

Through: Mr. Sunil K. Mittal, Mr. Vipin K.
Mittal and Mr. Anshul Mittal, Advocates

versus

M/S RAM KUMAR GUPTA (HUF) Respondent

Through: Mr. Sanjay Mann, Advocate

+ CRL.M.C. 1272/2015 and Crl. M.A. 4632/2015

**T G LEISURE & RESORTS P.LTD.
& ORS.**

..... Petitioners

Through: Mr. Sunil K. Mittal, Mr. Vipin K.
Mittal and Mr. Anshul Mittal, Advocates

versus

RAM KUMAR GUPTA (HUF) Respondent

Through: Mr. Sanjay Mann, Advocate

+ CRL.M.C. 1276/2015 and Crl. M.A. 4643/2015

**T.G.LEISURE & RESORTS P. LTD.
& ORS.**

..... Petitioners

Through: Mr. Sunil K. Mittal, Mr. Vipin K.
Mittal and Mr. Anshul Mittal, Advocates

versus

RAM KUMAR GUPTA (HUF)

..... Respondent

Through: Mr. Sanjay Mann, Advocate

+ CRL.M.C. 1278/2015 and Crl. M.A. 4646/2015

T.G.LEISURE & RESORTS P. LTD.
& ORS.

..... Petitioners

Through: Mr. Sunil K. Mittal, Mr. Vipin K.
Mittal and Mr. Anshul Mittal, Advocates

versus

RAM KUMAR GUPTA(HUF)

..... Respondent

Through: Mr. Sanjay Mann, Advocate

+ CRL.M.C. 1292/2015 and Crl. M.A. 4747/2015

M/S T G LEISURE & RESORTS (P) LTD
& ORS

..... Petitioners

Through: Mr. Sunil K. Mittal, Mr. Vipin K.
Mittal and Mr. Anshul Mittal, Advocates

versus

M/S RAM KUMAR GUPTA (HUF)

..... Respondent

Through: Mr. Sanjay Mann, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent had filed five criminal complaints (CC nos.4840/1/12, 5464/1/12, 5488/1/12, 5651/1/12, 5652/1/12) each alleging offences punishable under Section 138 of the Negotiable Instruments Act, 1881 having been committed by the petitioners qua certain cheques which had been issued by them in favour of the

former, each upon presentation having been returned unpaid by the bank, no payment having been made inspite of elapse of the statutory period(s) in the wake of demand notice(s) which had been issued and duly served. The Metropolitan Magistrate, after preliminary inquiry, issued summons against the petitioners. The petitioners raised certain contentions before the Metropolitan Magistrate at the stage of service of notice under Section 251 of the Code of Criminal Procedure, 1973 (Cr. PC). The same having been repelled, the petitioners approached the court of Sessions invoking its revisional jurisdiction by almost identical revision petitions (CR Nos.125/14, 123/14, 122/14, 126/14, 124/14) which were dismissed by the orders that are impugned through the petitions at hand submitted under Section 482 Cr. PC, the prime submission being that the proceedings in the criminal cases are an abuse of the process of court.

2. Both sides have been heard at length and the records have been perused.

3. Against the above backdrop, question arose as to whether the petitioner having availed of the remedy of revision should be allowed to have recourse to the petition at hand as a substitute for virtually a second revisional challenge or scrutiny which is clearly barred under Section 397 (3) Cr.P.C.

4. This Court in an almost similar fact-situation, taking note of the decisions of the Supreme Court reported as *Krishnan Vs. Krishnaveni*, (1997) 4 SCC 241; *Rajinder Prasad Vs. Bashir*, (2001) 8 SCC 522 and *Kailash Verma vs. Punjab State Civil Supplies Corporation & Anr.*,

(2005) 2 SCC 571 and following similar view taken by a learned single Judge of this Court in *Surender Kumar Jain vs. State & Anr.*, ILR (2012) 3 Del 99, in absence of a special case being made has earlier declined to interfere by the ruling (dated 03.07.2018) in CrI.M.C. 164/2018 *Ajay Maini vs. The State Govt. of NCT of Delhi & Ors.* in exercise of extraordinary jurisdiction under Section 482 Cr.P.C.

5. Nonetheless the contentions of the petitioners have been reconsidered to find if there has been a miscarriage of justice by initiation of criminal action against the petitioners on the basis of allegations set out in the criminal complaints referred to above.

6. It appears that the respondent (complainant) is the owner of certain immovable properties in Village Tikri Kalan, New Delhi-110 041, the first petitioner being in the business of hospitality industry desirous of setting up a motel, the other petitioners being its directors. The parties had entered into a lease agreement on 09.06.2011 respecting the said immovable property in terms of which it was let out by the complainant to the petitioners initially for a period of 108 months with effect from 01.09.2011, it being subject to renewal for a further period of six years or in part.

7. The terms of the lease agreement would show that the petitioners (lessee) were to pay a sum of Rs.21 Lakh p.m. as rent, in addition to service tax and cess as may be applicable for using and enjoying the said premises. It is also clear that the lessee had paid unto the complainant (lessor) an amount of Rs.1,26,00,000/- in two

parts – as interest free security deposit which was to be refunded by the lessor to the lessee after receiving back the vacant physical possession of the leased property in good, equipped and decorative condition, this subject to the lessee having paid the entire rent alongwith service tax, cess and any other taxes applicable, as also having cleared the charges payable for certain facilities like telephone, electricity, water etc.

8. It appears that post dated cheques towards rent and service tax were handed over at the time of creation of the tenancy. The ten cheques which are subject matter of the pending criminal complaints from which the present proceedings arise are part of the said post dated cheques, five of them towards rent and the remaining towards the service tax for the months of May 2012, December 2012, January 2013, February 2013 and March 2013 respectively.

9. It is not in dispute that the cheques were presented on or after the dates purportedly appearing on each of them, during their validity, each having been returned unpaid. It appears the reasons for return of the cheques were indicated to be “*payment stopped*” on instructions issued by the drawer (the petitioners). In the wake of the dishonor of the cheques as above, notices of demand were issued within the statutory period and complaints were filed after elapse of the period prescribed in law.

10. It is the submission of the petitioners that difficulties had arisen in the use and enjoyment of the leased property due to various reasons including seepage, etc. and on this account certain correspondence

was exchanged but since there was no satisfactory resolution, the petitioners were left with no option but to issue “*stop payment*” instructions to the bank. It is submitted that against this backdrop, the petitioners had also called upon the complainant not to present the remaining post dated cheques which, even otherwise, as per the understanding, could not have been presented for payment without consent of the drawer. The first petitioner instituted a suit [CS (OS) 512/13] – for permanent injunction to restrain the complainant against encashing the post dated cheques. The said suit came up before a learned single Judge of this court on the original side on 29.08.2013 when it was admitted that the petitioners had surrendered the tenancy, having handed over vacant and physical possession of the demised premises to the respondent on 30.03.2013. Against this backdrop, the remaining 34 post dated cheques were returned by the complainant to the petitioners, some understanding about certification respecting deduction at source of the tax liability having also been reached, the suit being withdrawn and disposed of accordingly.

11. It is the contention of the petitioner that since the complainant (lessor) has been holding on to the security deposit in the sum of Rs.1.26 Crores, the liability arising out of five cheques being only to the extent of Rs.1.05 crores, it is unfair, unjust and unconscionable on the part of the respondent to continue with the prosecution of the criminal complaints particularly against the backdrop of the fact that the tenancy has come to an end and the vacant and physical possession of the demised property has been returned on 30.03.2013. It is the submission of the petitioners that the cheque in question were post

dated and could not have been presented without the prior consent and approval of the drawer. It is also the submission of the petitioners that against the interest free security deposit which was made at the inception of the tenancy, there is no legally enforceable debt or other liability subsisting on account of the dishonor of the five cheques and in this context reliance is placed on *M/s. Indus Airways Pvt. Ltd. and Ors. vs. M/s. Magnum Aviation Pvt. Ltd. and Anr.*, 2014 (2) JCC 115; (2014) 12 SCC 539.

12. It cannot be lost sight of that the determination of the lease by return of the demised premises to the lessor on 30.03.2013 is an event subsequent to the *prima facie* commission of the offences under Section 138 of the Negotiable Instruments Act, 1881 which are the subject matter of the criminal complaints brought on the basis of dishonor of the aforementioned ten cheques, the last in chronology of which arises out of demand notice dated 14.03.2013. On being asked, the counsel for the petitioner fairly conceded that no reply was sent in answer to the demand notices within the statutory period nor it was suggested, directly, indirectly or even remotely that the liability arising out of the dishonoured cheques could be adjusted by the payee from out of the interest free security deposit held. The liability to return the interest free security deposit had not arisen by the time the cause of action for filing the criminal complaints had come up. Since the handing of the vacant and physical possession of the premises was a subsequent event that occurred on 30.03.2013, it was only on that date and thereafter that the complainant became obliged to account for the interest free security deposit. In fact prior to the said date, he had

no lawful reason or authority to draw from the security deposit so as to claim the money which was stated to be due against the dishonoured cheques.

13. The interest free security deposit, even otherwise, was not meant to take care only of default in payment of rent. Various other liabilities including on account of taxes or utility charges as indeed the satisfaction about the condition in which the property was being handed over required to be factored in such context. It was the submission of the petitioners themselves that in terms of the arbitration clause forming part of the lease agreement, the parties are presently before an arbitrator *vis-a-vis* the refund of the security deposit. Such deposit and arbitral proceedings relate to civil rights and obligations, determination of such rights and obligations being still pending, no benefit on that account can be claimed – not atleast at this stage of the criminal process, in the context of proceedings relating to offences under Section 138 of the Negotiable Instruments Act.

14. On the foregoing facts and in the circumstances, it is clear that the contentions of the petitioners at best give rise to questions of facts which will have to be determined by the trial court on the basis of evidence. [see *Rajiv Thapar and Ors. Vs. Madan Lal Kapoor*, (2013) 3 SCC 330]. There is no case made out for any interdict by this court in the criminal proceedings in the aforementioned five complaints at this stage in exercise of jurisdiction under Section 482 Cr. PC.

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

R.K.GAUBA, J.

October 05, 2018

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