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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 1756/2016 & CrI.M.A.No.9132/2016

DARBARI LAL

..... Petitioner

Through: Ms Charu Sachdev, Adv

versus

NCT OF DELHI & ANR

..... Respondents

Through: Mr Rajesh Mahajan, ASC for State

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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08.02.2018

Petitioner is seeking quashing of the summoning order dated 01.10.2008; the said summoning order being issued by the Magistrate under the provisions of Section 138 of the Negotiable Instruments Act.

Notice of this petition had been issued to respondent No. 2 / complainant. Respondent No. 2 has been served; he has not appeared.

This Court had been informed that after the impugned order, notice has since been framed and the complainant is under cross examination; the next date fixed before the learned the learned M.M is 09.02.2018.

Learned counsel for the petitioner points out that this complaint necessarily needs to be quashed as the payee in this case was one Raj Rani Sharma; she had issued a cheque dated 18.12.2007; Raj Rani Sharma had died on 21.12.2007. The legal notice had been issued on

her behalf through her son Jagdish Chand Sharma. The complaint was thereafter filed by him. Jagdish Chand Sharma has also since died and his widow is now in the picture and is now in the witness box. The vehement submission by the learned counsel for the petitioner is that this complaint needs to be quashed as the payee in this case was Raj Rani Sharma; Jagdish Chand Sharma does not even qualify as a “holder in due course” in terms of Section 9 of the Negotiable Instruments Act and as such the complaint filed by Jagdish Chand Sharma is in no way maintainable.

The Trial Court is seized of the matter. The date as to when Raj Rani Sharma had expired and when it was finally disclosed is a matter which is subjudice before the trial Court. These submissions now made before this court shall be considered by the trial judge at the time of final arguments and shall be answered specifically by the trial judge. The trial judge is also advised to expedite the trial.

Petition disposed of in the above terms.

INDERMEET KAUR, J

FEBRUARY 08, 2018
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