

\$~22 to 24

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 27th September, 2018

+ CRL.M.C. 4943/2018 and Crl. M.A. 33054/2018

ANIL SHERE

..... Petitioner

Through: Mr. Rakesh Kumar Dudeja,
Advocate

versus

CHOYANG HEALTH CARE INDIA PVT LTD ... Respondent

Through: None

+ CRL.M.C. 4944/2018 and Crl. M.A. 33055/2018

ANIL SHERE

..... Petitioner

Through: Mr. Rakesh Kumar Dudeja,
Advocate

versus

CHOYANG HEALTH CARE INDIA PVT LTD Respondent

Through: None

+ CRL.M.C. 4945/2018 and Crl. M.A. 33056/2018

ANIL SHERE

..... Petitioner

Through: Mr. Rakesh Kumar Dudeja,
Advocate

versus

CHOYANG HEALTH CARE INDIA PVT LTD... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. These petitions arise out of proceedings relating to three different criminal complaint cases (CC 6358/17, 6359/17 and 6357/17) which were brought before the court of the Metropolitan Magistrate by the respondent company each alleging offences punishable under Section 138 of the Negotiable Instruments Act, 1881 having been committed by the petitioner respecting different cheques.
2. The complaint cases had earlier been pending on the file of the Metropolitan Magistrate of West District, Delhi, they having been instituted in the year 2012 concededly within the period of limitation under the said law, but the same having been returned on the finding that there was no territorial jurisdiction in light of the ruling of the Supreme Court reported as *Dashrath Rupsingh Rathod vs. State of Maharashtra and anr (2014) 9 SCC 129*. The Negotiable Instruments Act, 1881 was subsequently amended in terms of which the ruling of the Supreme Court in the said case lost its effect, the jurisdiction to deal with the three cases consequently now *prima facie* vesting in the court of the Metropolitan Magistrate for South District at Saket, New Delhi.
3. It is against the aforesaid backdrop that the complaint cases were presented afresh before the court where they are now pending, each accompanied by application under Section 5 of the Limitation Act for condonation of delay. A copy of the proceedings recorded in each case has been submitted, the same would show that upon

complaint cases with such applications having been presented, the Metropolitan Magistrate issued notice on the prayer for condonation of delay by similar orders dated 27.05.2017. After securing the response of the petitioner (accused in the case), by similar orders passed on 28.03.2018, the Metropolitan Magistrate condoned the delay which had occurred during the interregnum pursuant to the return of the complaints after the ruling in *Dashrath Rupsingh Rathod* (supra) and the fresh filing thereafter.

4. The petitioner challenged the said orders in the court of Sessions by invoking its revisional jurisdiction by filing petitions (Crl. Revision no.214/18, 211/18 and 213/18). The revisional court was not impressed. Holding that there was no infirmity in the order of the Metropolitan Magistrate, the revision petitions were dismissed affirming the view that the delay had been properly explained.

5. 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.

6. 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 out, 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.

7. The courts below, by their consistent orders exercising the judicial discretion vested in them, have accepted the explanation for delay. There is no reason why this court should interfere in the said judicial discretion which has been properly exercised.

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

R.K.GAUBA, J.

September 27, 2018

yg