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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 10th October, 2018

+ CRL.M.C. 4404/2015

M/S S D INFOSYS & ANR

..... Petitioners

Through: Mr. Bartha Rastogi, Mr. Vijay
Aggarwal & Mr. Shailesh
Pandey, Advocates.

versus

STATE & ANR

..... Respondents

Through: Mr. Mukesh Kumar, APP for
the State.
Ms. Ruchika Singh, Adv. for R-
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CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioners are facing trial in complaint case (CC No. 121/01/2014) instituted by the second respondent alleging offence under Section 138, Negotiable Instruments Act, 1881 (NI Act) in the court of Metropolitan Magistrate, New Delhi, the accusations primarily being that cheque bearing no. 519567 dated 22.03.2011 had been issued against the account of the first petitioner with Allahabad Bank, East Patel Nagar, New Delhi in the sum of Rs. 2,57,35,677.83 in favour of the complainant (second respondent), which, upon presentation, was returned unpaid, no payment having been made in spite of notice of demand issued and served in its wake. The second

petitioner is described in the said complaint as the third accused, he statedly holding the position of Principal Officer of the first petitioner, besides him there being other persons shown in the array of accused.

2. The complaint, as aforesaid, had been instituted for and on behalf of the second respondent by its representative Mr. M. Ramakrishna. It has been submitted by the petitioners that they are also facing trial in three other similarly placed complaint cases each involving offence under Section 138 NI Act, they being M/s Micro Clinic India Pvt. Ltd. vs. Sushil Chawla & Ors. (CC no. 269/01/14); Iris Computers vs. M/s SD Infoysis (CC no. 157/01/14) and Salora International vs. Symentic Infoysis Pvt. Ltd. (CC no. 314/01/12).

3. It appears that on the basis of another complaint at the instance of the said very entity, the police had registered first information report (FIR) no. 56/2012 with Economic Offences Wing (EOW) of New Delhi. The investigation into the said FIR having been completed, a final report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C) was submitted wherein prosecution, *inter alia*, of the petitioners was sought for offence under Section 406, 420, 467, 468, 471, 120 B of Indian Penal Code, 1860 (IPC). It is stated that the petitioners were summoned by the court of Metropolitan Magistrate in the wake of cognizance having been taken on the said charge-sheet, the case arising therefrom being presently pending on the file of the Metropolitan Magistrate. It is pointed out that Mr. M. Ramakrishna is one of the witnesses cited by the police in the said case.

4. The petitioners had moved an application in CC No. 121/1/2014 before the Metropolitan Magistrate seeking all the said five cases including the State case arising out of FIR no. 56/2012 to be brought together for a joint trial, referring in this context to the provisions contained in Section 210 (2) read with Section 220 (3) Cr.P.C., the prime submissions being that the two cases give rise to trial on the basis of acts allegedly committed, they constituting offences falling within two or more separate definitions of law in force within the meaning of Section 220 (3) Cr.P.C. and since the petitioners are common as accused in both the cases they ought to be tried together in terms of Section 220 read with Section 210 (2) Cr.P.C.

5. The Metropolitan Magistrate found no merit in the prayer and, thus, dismissed the application to above effect, by order dated 01.06.2015, the correctness whereof is challenged by the petition at hand presented under Section 482 Cr.P.C.

6. The fallacy of the submissions made by the petitioner lies in the fact that the offence under Section 138, NI Act cannot be said to be the same offence as are involved in the State case, they being punishable under Sections 406/420/467/468/471/120 B IPC. It may be, as was orally submitted, that the issuance of cheque in question, the same having been returned unpaid, upon presentation, are possibly facts which are relevant also to the State case. But then, unlike the State case where offences under Indian Penal Code are attracted the complainant in the cases under Negotiable Instruments Act would be called upon to prove the notices of demand and there being no

payment in wake of such notices on the part of the persons accused to bring home the charge under Section 138. In this view of the matter, it cannot be said, with reference to Section 220 (3) Cr.P.C. that the acts required to be proved in all these cases are common, such facts constituting similar offences falling within two or more separate definitions of law. It has also to be borne in mind that the procedure required to be followed for trial of cases under Section 138 NI Act is also distinct.

7. The view taken by the Metropolitan Magistrate, thus, does not suffer from any error, infirmity or impropriety. There is no case made out for any interference by this Court under Section 482 Cr.P.C.

8. The petition and the application filed therewith are dismissed.

R.K.GAUBA, J.

OCTOBER 10, 2018

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