

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: January 07, 2019

+ **CRL.M.C. 898/2018 & CRL.M.As. 3331/2018, 47233/2018**

+ **CRL.M.C. 900/2018 & CRL.M.A. 47234/2018**

AJAY KUMAR Petitioner

Through: Mr. Fanish Kumar Rai and Mr.
Abinash Kumar, Advocates

Versus

THE STATE GOVT OF NCT OF DELHI & ORS.... Respondents

Through: Mr. M.S.Oberoi, Additional Public
Prosecutor for respondent-State
Mr. Aditya Trehan and Mr. Vinit
Trehan, Advocates for respondent
No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. With the consent of learned counsel for the parties, both these petitions are being heard together and by this common order, they are being disposed of.
2. In the above-captioned two petitions, challenge is to impugned order of 17th November, 2017, which records petitioner's liability to pay the admitted amount of ₹14.70 lacs in each of the two complaints under Section 138 of *the Negotiable Instruments Act, 1881* filed by respondents against petitioner, who is the signatory of the cheques in question.

3. There is no challenge to order of 11th July, 2017 vide which petitioner's application to substantiate his statement of 18th December, 2014 has been dismissed. However, respondents' counsel has handed over copy of order of 11th July, 2017 and its perusal reveals that petitioner's version of his co-accused/*Vivek Sinha* undertaking to pay the amount in question, has been negated by the trial court by observing that there is no provision in law for substantiating or explaining the statement given in the court, by adopting a different interpretation. Respondents' counsel has drawn attention of this Court to an extract of the order of 12th January, 2017, reproduced by petitioner in paragraph No.7 of the petition, to point out that petitioner is trying to take advantage of the fact that his co-accused/*Vivek Sinha* has absconded to USA.

4. Upon hearing and on perusal of impugned order as well as order of 11th July, 2017, I find that this matter was sent to mediation and as per trial court's order of 25th March, 2015, mediation was not successful. According to petitioner, he had admitted to pay the amount of ₹14.70 lacs, but relying upon an undertaking given by co-accused/*Vivek Sinha*, who had to remit various amounts to petitioner and other parties.

5. During the course of hearing, attention of this Court was drawn to various emails of co-accused/*Vivek Sinha* and the latest one is of 10th February, 2015, which does indicate that petitioner's co-accused/*Vivek Sinha* had undertaken to pay varying amount not only to petitioner, but to other persons, including the complainant. Supreme Court in *Indian Bank Association and Others v. Union of India and Others*, (2014) 5 SCC 590 has reiterated that there has to be speedy disposal of cases under Section

138 of *the Negotiable Instruments Act, 1881* and the directions issued by various High Courts have been endorsed. By adopting a pragmatic and realistic approach, while exercising extraordinary jurisdiction under Section 482 of Cr.P.C., the impugned order as well as order of 11th July, 2017 is set aside, in order to give an opportunity to petitioner to put his version before the trial court as the same is required to be tested, if respondents deem it appropriate to do so. This Court is conscious of the fact that due to the statement given by petitioner, trial of this case under Section 138 of *the Negotiable Instruments Act, 1881* has not progressed, but the procedure, as established by law, has to be followed.

6. In view of aforesaid, both these petitions and the applications are disposed of with direction to trial court to expedite the trial of this case in light of the directions issued by this Court in *Rajesh Agarwal v. State*, ILR (2010) 6 Del 610 and to make all endeavour to conclude the trial of this case within a period of six months or so.

7. With aforesaid direction, these petitions and the applications are accordingly disposed of.

 (SUNIL GAUR)
JUDGE

JANUARY 07, 2019

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