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

Date of decision: 21.11.2019

+ CRL.A. 367/2018

RAHUL GUPTA

..... Appellant

Through: Mr. Varun Tyagi, Adv.

versus

STATE & ANR

..... Respondents

Through: Mr.Panna Lal Sharma, APP for State

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present appeal, the appellant seeks directions thereby quashing and setting aside of the impugned order and judgment dated 23.08.2016 passed by the learned Metropolitan Magistrate, West Delhi in Complaint Case No. 19715/2016 titled as '*Rahul Gupta vs. Gaurav Bhatia*' and consequently, direct the learned Metropolitan Magistrate to restore the same on merit.

2. Brief facts of the case are that respondent No. 2 had availed a friendly loan of ₹13,50,000/- in the month of September, 2013 from the appellant and in discharge of his legal liability and to return the said amount, the

respondent No.2 had issued a cheque bearing No. 311606 dated 10.02.2014 for a sum of ₹13,50,000/- drawn on Andhra Pradesh Bank, Palam Vihar Branch, Gurgaon in favour of the appellant. However, the said cheque when presented by the appellant for encashment with his Banker – HDFC Bank Ltd, New Delhi, was returned dishonoured by bank of Respondent No.2 with the endorsement "Insufficient Funds" and the information regarding dishonour of cheque was received by the appellant by way of 'cheque return memo' dated 12.02.2014. Thereafter, appellant had also sent a legal notice dated 28.02.2014 to respondent No.2 demanding the amount of the cheque and loan. However, instead of returning the amount and discharging his liability, respondent No. 2 had sent a reply dated 13.03.2014, whereby he had raised baseless and frivolous issues only to avoid his liability and the amount was not returned in favour of the appellant. Hence, a complaint under section 138 of the Negotiable Instruments Act was filed by the appellant against the respondent No.2 being CC No. 7743/1/2014 before the Court of Additional Chief Metropolitan Magistrate, Tis Hazari Courts, Delhi in the month of April, 2014 wherein cognizance was taken by the Court and summons were issued to the accused/respondent No.2. However, during the time, when the said matter was pending adjudication, in light of the

judgment passed by the Hon'ble Supreme Court in *Dashrath Rupsingh Rathod Vs. State of Maharashtra & Anr., (2014) 9 SCC 129*, the said complaint case was returned to the appellant/complainant by the Court vide order dated 09.10.2014 to be filed before competent Court i.e. before the jurisdiction of the Court where the bank of the drawer/accused/respondent No.2 was located.

3. Hence, the said complaint was filed by the Appellant/Complainant before the competent Court of Judicial Magistrate, Gurugram (earlier Gurgaon), Haryana and the Court of Magistrate First Class, Gurugram had taken up the matter on 14.11.2014, and on 01.12.2014 summons were issued to the accused/respondent No.2 for 19.01.2015, pursuant to which accused had appeared before the Court and the matter was proceeded further by the Court in accordance with the law."

4. Thereafter, as per prescribed procedure, the matter was fixed for complainant's evidence and the accused had sought opportunity to cross-examine the witness(es) of the complainant, which request of the accused/respondent No.2 was allowed by the Court. Subsequently, the complainant/appellant was cross-examined by the counsel of the accused/respondent No.2 in part on 04.03.15 and the matter was adjourned

for 20.03.15 on the request of the counsel of the respondent No.2/Accused for completion of complainant's evidence.

5. On 20.03.2015, appellant/complainant was further cross examined by the counsel of the respondent No.2/accused though the same was not completed, thereafter another adjournment was sought by the counsel for the respondent No.2 for want of certain documents on the part of the appellant/complainant and the Court was pleased to adjourn the matter for 13.04.2015. On subsequent two dates i.e. 13.04.2015 and 16.05.15 nothing substantive could be done in the matter as the Presiding Officer was on leave and the matter was taken up by the 'Link Magistrate' and the next date, in the matter, was fixed as 04.07.2015. However, it is pertinent to note here that the complainant was regularly being represented by himself and/or his counsel or both.

6. Meanwhile, the Negotiable Instruments Act was amended by the Parliament, which amendment negated the judgment passed by the Hon'ble Supreme Court in the case of "***Dashrath Rupsingh Rathod Vs. State of Maharashtra & Anr.***" and the amendment laid down that:

“the offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an

account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated Thus, in view of the amendment, complaint under the provisions of section 138 of the Negotiable Instruments Act, 1881 could be filed and maintained only at the place where the branch of the bank where the bank account of the Payee is situated.”

7. Learned counsel further submits that the aforesaid fact and law was brought to the kind knowledge of the Magistrate First Class, Gurugram on 15.09.15 and it was requested to the Court to transfer the matter to the competent Court and the Court after hearing the submissions of the counsel for the appellant/complainant was pleased to fix the matter for 29.10.2015 for consideration. On the said date, the Court, after appreciating the true position of law, was pleased to return and transfer the complaint to the competent Court i.e. District Courts, Tis Hazari, Delhi and directed the parties to appear before the competent Court on 11.01.16.

8. Learned counsel further submits that on the aforesaid date, the appellant/complainant along with his counsel went to the concerned/competent Court, Tis Hazari Courts, Delhi and enquired about the matter but it was informed to them that the matter with the said details had

not reached yet in the office and asked them to enquire after a week.

9. One week thereafter, the appellant/complainant and his counsel again enquired from the registry of Tis Hazari Courts, as well as from the Court of learned Chief Metropolitan Magistrate, West, Delhi about the status of the matter and as to whether the office had received the matter from the Court of Gurugram. However, again it was told to the complainant/his counsel that the matter had not been received on transfer from the Court of Gurugram and asked the complainant to approach the office of Court of Gurugram from where the matter was supposed to be transferred. The complainant was further directed to obtain tracking details including tracking number and date as to when the matter was dispatched from the Court of Gurugram.

10. The appellant/complainant through his counsel continued to enquire from the office/registry of the Court of Gurugram about the date of dispatch of the matter as well as the details so that delivery/progress of the matter could be tracked, but concerned office continued to state that the matter had been dispatched, but delivery date, mode and article number and other details were never provided as they said that the same was not traceable. However, registry was continuously assuring that they were searching the required details and as soon as they will get it will be apprised the same to

the complainant/his counsel but it was never provided either to the complainant or his counsel.

11. Learned counsel further submits that for recovery of the loan amount of ₹13,50,000/-, a summary suit was also filed by the Appellant before the Court of learned Additional District Judge, Tis Hazari Courts, Delhi against the respondent No.2. In the said suit also, notice to the respondent No.2 was issued and he had filed his leave to defend application, which was allowed by the Court and the suit was converted into an ordinary suit which is pending adjudication and at present, matter is at the stage of defendants' evidence.

12. It is not in dispute that the plaintiff/appellant had filed his evidence by way of, affidavit and in the affidavit also he had mentioned about the pendency of complaint under Section 138 of the Negotiable Instruments Act against the respondent No.2/defendant. The aforesaid suit was last listed on 11.04.2017 for evidence of the plaintiff and on which date the plaintiff was cross examined by the counsel for the defendant/respondent No.2 in part. During the cross examination, the counsel for the respondent No.2/defendant gave the suggestion that the plaintiff had wrongly deposed that the complaint under section 138 against the defendant was pending, whereas the

same had already been dismissed on 23.08.2016 and the accused/defendant had been acquitted by the Court of Ms. Ruchi Aggarwal Asrani, Learned MM, Tis Hazari Courts, Delhi.

13. Learned counsel for the petitioner has submitted that on the aforesaid suggestion given by the counsel for the respondent No.2/ defendant, the counsel for the appellant immediately enquired from the aforesaid Court and then only acquired knowledge that the complaint filed by the appellant had actually been dismissed vide order dated 23.08.2016 and the matter was consigned to the Record Room.

14. Order sheet reveals that Mr. Manish Gupta appeared on behalf of the respondent No. 2 on 13.12.2017 and leave was granted by the said order. Order sheet further reveals that on 19.03.2018, none appeared on behalf of the respondent No. 2 and leave was granted vide the said order.

15. Keeping in view the fact that initially the appellant had filed complaint under Section 138 Negotiable Instruments Act before the Courts in Delhi and thereafter, in view of the ***Dashrath Rupsingh Rathod (Supra)***, the same was returned and filed before the Court of Gurugram (Haryana). Thereafter, due to the amendment in the year 2015, whereby the decision passed in ***Dashrath Rupsingh Rathod (Supra)*** by the Hon'ble Supreme

Court had been nullified. Consequently, the complaint filed by the appellant at Gurugram (Haryana) was transferred from there to the District Court, Delhi.

16. The complaint was returned and transferred vide order dated 29.10.2015 and the date given in the said order was 11.01.2016. However, the matter was not listed on 11.01.2016. Thereafter, he got verified from the Court of Gurugram about the status of the same.

17. The matter was listed for the first time on 28.01.2016 before the learned Chief Metropolitan Magistrate, Delhi and the information of the same was never given to the appellants or his counsel. Thereafter, matter was fixed for 02.02.2016 and 10.05.2016. On the aforementioned dates, the Presiding Officer was on leave, therefore, no proceedings could take place. On 23.08.2016, since the appellant was not aware of the further date of hearing, therefore, neither appellant nor his counsel appeared on the said date. Consequently, vide the aforesaid order, the complaint was dismissed for not being prosecuted.

18. Fact remains that when the Gurugram Court transferred the matter vide order dated 29.10.2015, it was to be listed before the District Court, Delhi on 11.01.2016, however, it was not listed on that day. Thereafter,

there was no information further to the appellant, as to when and where the matter was to be posted.

19. Therefore, in view of the peculiar circumstances of the present case and the fact that the appellant was running from pillar to post as complaint was initially filed at Delhi, thereafter transferred to Gurugram and then to Delhi again. I hereby set aside the order dated 23.08.2016. Consequently, the Trial Court is directed to restore the Complaint Case No. 19715/2016 to its original number.

20. The parties are directed to appear before the concerned Court on 02.12.2019. It is made clear that if none appears on behalf of the respondent No. 2 on the date fixed i.e. on 02.12.2019, the learned Trial Court may take steps against the said respondent, as per the law.

21. In view of the above, the petition is allowed.

22. *Dasti.*

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 21, 2019/PB