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

Date of decision: 22.10.2019.

\+   CRL.M.C. 1450/2017

UMA KANT UMESH ..... Petitioner

Through Md. Ehraz Zafar, Mr. Akash Tyagi and Mr. Satatya Anand, Advs.

versus

STATE NCT OF DELHI & ANR ..... Respondents

Through Mr. Izhar Ahmed, APP for State. Adv. (appearance not given) for R-2

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (ORAL)

1. Vide the present petition, the petitioner seeks direction thereby to set aside the impugned summoning order dated 11.01.2017 passed by the Ld MM, (NI Act)-04 South-East, Saket Courts and quash the Criminal Complaint bearing No. 620506 of 2016 filed under section 138 read with section 142 of the Negotiable Instrument Act.

2. Brief facts of the case are that M/s Kumar Building and Construction Private Limited, is a company incorporated under the Companies Act, 1956 having its Registered Office at B-55/A Kalkaji, New Delhi. Mr. Anuj Kumar

is the Director of the aforesaid Construction Company having holding of 80% of the profit share and was in charge of/responsible for the day to day functioning and important decision making powers of the said company.

3. The Petitioner herein joined the company as a Director in the year 2009 with 20% holding in the profit share of the said company.

4. Further case of the petitioner is that the company was going through a rough period in the year 2011-12 and as the company was on the verge of its closure, Mr. Anuj Kumar was in dire needs of finance/money for the expansion and investment in the company. In the meanwhile, the Respondent No.2 approached Mr. Anuj Kumar and induced him by saying that he, with some financial investment (with a profit sharing arrangement), will help Mr.Anuj Kumar in the expansion of his business and hence he entered into financial arrangements, with the Respondent No.2. Relying on those false assurances of the Respondent No.2, without taking the consent and behind the back of the Petitioner, Mr. Anuj Kumar took a Loan of Rs. 12,58,000/- from Respondent No.2 for the investment in the business.

5. Mr. Anuj Kumar for the first time, introduced the Respondent No.2 to the Petitioner only in the month of January 2013 and informed the Petitioner about the above mentioned facts pertaining to the Loan borrowed by him

from the Respondent No.2 for the expansion of their business and requested the Petitioner to handover the Security Cheque to the Respondent No.2 that too from his personal account with an assurance that the Respondent No.2 shall not present this cheque for encashment as Mr. Anuj Kumar has already promised the Respondent No.2 that before the expiry of the validity period of the cheques, he will make all arrangements to issue the cheque from the bank account of the Company and after receiving the said cheques and payments from the company, the Respondent No.2 shall handover the above said three cheques issued by the Petitioner as Security cheque to Respondent No.2.

6. Learned counsel for the petitioner further submits that Mr. Anuj Kumar also brought into the notice of the Petitioner that he himself has also issued 3 cheques as security cheque on the above-said terms and conditions with Respondent No.2.

7. Thereafter, on 23.03.2013, Mr. Anuj Kumar called the Petitioner to sign 3 Company's cheques as joint authorized signatory of the said cheques. The Petitioner duly signed the aforesaid cheques as requested by Mr. Anuj Kumar, who was the Managing Director and primary stake holder of the Company. Thereafter, as their company was not doing well, the Petitioner,

who was a very junior stake holder of the company was left with no other choice but to defacto dis-associate himself from the company and look for other avenues for his day to day living and livelihood. However, to his utter shock and surprise, the Petitioner for the first time received Summon Notice from the Ld. MM, South-East, (NI Courts] Saket Court Complex, New Delhi, directing the Petitioner to appear before it for hearing on 17.04.2017 along-with the Criminal Complaint and other relied documents filed by the Respondent No.2.

8. Learned counsel for the petitioner further submits that by bare perusal of the Complaint, it appears that though the Respondent No.2 claims to have sent a Legal Notice dated 22.03.2013 to the Petitioner, but, the true fact is that the said Legal Notice has never been received by the Petitioner and hence on this ground itself the whole complaint is bad in Law.

9. Learned counsel for the petitioner further submits that upon bare perusal of the Court file, it appears that though this complaint has been filed on 02.05.2013 before Ld.CMM, and thereafter listed before the Ld. Trial Court on 04.05.2013, but very surprising and shocking that the present Summon has been served by the Petitioner for first time that too by service of affixation for appearing before Ld. Trial Court on 17.04.2017. From the

Court file, it appears that after filing of the complaint and getting the Notice issued in the present case in 2013 itself, the Respondent No.2 for the best reason known to him has not pursued the matter and has only started pursuing the matter only from 27.08.2016, which is evident from the ordersheet of the Trial Court.

10. Learned counsel for the petitioner argued that the complaint in question was filed on 02.05.2013, however, the cognizance was taken by the Court by issuing summons against the petitioner on 17.04.2017. Therefore, the punishment under Section 138 of the Negotiable Instrument Act is two years and the cognizance taken by the Trial Court is after more than four years. Therefore, the complaint filed by respondent no.2 is liable to be rejected.

11. To strengthen his arguments, learned counsel for petitioner has relied upon the case ***S. Rama Krishna Vs. S. Rami Reddy (D) by his LRs and Ors. AIR 2008 SC 2066*** whereby the Hon'ble Court has held that:-

> *"Speedy trial is a fundamental right of an accused. The orders passed by the competent court of law as also the provisions of Code of Criminal Procedure must be construed having regard to the Constitutional scheme and the legal principles in mind*"

12. Fact remains that the case in hand is not a warrants case, therefore,

Section 468 (2)(C) under which cognizance should be taken within the time mentioned therein based upon the offences committed by the accused.

13. In the present case, the complaint is filed under Section 138 of the Negotiable Instruments Act which is a summary trial and in similar facts, Hon'ble Supreme Court in the case of ***Indra Kumar Patodia And Another vs. Reliance Industries Limited And Others (2012) 13 SCC*** has held as under:-

> *23.In Japani Sahoo vs. Chandra Sekhar Mohanty, (2007) 7 SCC 394, in para 48, this Court held that: (SCC p.411) "48 So far as the complainant is concerned, as soon as he files a complaint in a competent court of law, he has done everything which is required to be done by him at that stage. Thereafter, it is for the Magistrate to consider the matter to apply his mind and to take an appropriate decision of taking cognizance, issuing process or any other action which the law contemplates".*
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> *This Court further held that "the complainant has no control over those proceedings". Taking note of Sections 468 and 473 of the Code, in para 52, this Court held that: (SCC p.412) "52...for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of the complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a Court".*
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> *24. In the light of the scheme of the Act and various provisions of the Code, we fully endorse the above view and hold that the crucial date for computing the period of limitation is the date of filing of the complaint or initiating criminal proceedings and not the date of taking cognizance by the Magistrate. In the case on hand, as*

pointed out earlier, the complaint was filed on 3-6-1998 which is well within the time and on the direction of the Magistrate, verification was recorded by solemn affirmation by authorized representatives of the complainant and after recording the statement and securing his signature, the learned Magistrate passed an order issuing summons against the accused under Sections 138/142 of the Act.

25. In the light of the above discussion, taking note of various provisions of the Act and the Code which we have adverted above, we hold that the complaint under Section 138 of the Act without signature is maintainable when such complaint is verified by the complainant and the process is issued by the Magistrate after due verification. The prosecution of such complaint is maintainable and we agree with the conclusion arrived at by the Division Bench of the High Court. Consequently, both the appeals fail and are dismissed.

14. In view of ***Indra Kumar Patodia And Another (Supra)***, the limitation provided under Section 468 is not applicable. Moreover, the cognizance of the complaint was taken by the concerned CMM, who thereafter marked the case to the concerned Trial Court. The Trial Court after going through the contents of the complaint and evidence on record, issued summons. However, nowhere it is provided in Section 138 & 142 of N.I. Act that the summons shall be issued within the prescribed time.

15. Therefore, in view of the settled proposition of law and the statutory

provisions, I find no merit in the present petition and the same is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

OCTOBER 22, 2019
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