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

+ **TR.P.(CRL.) 55/2019**

GAGANDEEP SINGH AHUJA

..... Petitioner

Through: **Ms. Vibha, Advocate.**

versus

BABLOO NARANG & ANR.

..... Respondents

Through: **Mr. Nimish Chib and Mr. P. Kashyap,
Advocates.**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

16.02.2024

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1. This transfer petition has been filed by the Petitioner seeking the following relief:

“Direct to transfer the C.C. No. 528700/2016 tilted as Gagandeep Singh Ahuja Vs. Babloo Narang and C.C. No.535031/2016 titled as Gagandeep Singh Ahuja Vs. Ruchi Narang from the court of Ms. Tista Saha, Ld. M.M., Tis Hazari Court, Delhi to the court of Shri Ajay Gard, Ld.CMM (Shahdara), Karkardooma Court, Delhi.”

2. According to the Petitioner, on 01.11.2023, Respondents had entered into an agreement to sell property bearing No. S-18, First Floor, Naveen Shahdara, Delhi, for a total sale consideration of Rs.30 lacs, out of which Rs.20 lacs were paid as part payment to the Respondents and the balance payment was payable on or before 15.05.2014. However, after taking Rs.20 lacs from the Petitioner, Respondents executed a General Power of Attorney in favour of Suresh Mehra and Poonam Jain on 12.03.2014 in respect of the

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above said property and thereafter, without disclosing this fact took the balance amount of Rs.10 lacs from the Petitioner. On being confronted and after repeated reminders, Respondents issued two post-dated cheques for total amount of Rs.30 lacs, which when presented were dishonoured. Petitioner filed a complaint of cheating and misappropriation of funds, pursuant to which FIR bearing No. 13/2015 was registered under Sections 420/406/34 IPC at PS: Shahdara. Respondents also filed a complaint under Section 200 Cr.P.C. being CC No.80/2015 against the Petitioner regarding the said two cheques. Both these criminal cases are pending in the Court of learned CMM, Shahdara, Karkardooma Courts. Complaints were also filed by the Petitioner regarding dishonour of cheques under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') being CC No. 528700/2016 titled '*Gagandeep Singh Ahuja v. Babloo Narang*' and CC No. 535031/2016 titled '*Gagandeep Singh Ahuja v. Ruchi Narang*', which are pending before the learned MM, Tis Hazari Courts. Petitioner seeks transfer of the complaint cases under Section 138 of the NI Act to the Court of learned CMM, Shahdara, Karkardooma Courts, where criminal proceedings in case FIR No.13/2015 are pending.

3. Learned counsel for the Petitioner states that the facts in all the cases are overlapping and the genesis of the complaints under Section 138 of NI Act as well as the FIR for cheating, forgery etc. lies in the dispute relating to the sale of the subject property and in these circumstances, the complaint cases under Section 138 of NI Act should be tried by the Court of learned CMM where the criminal case pursuant to FIR No. 13/2015 is pending. This would be in the interest of the parties, as it would lead to expeditious disposal of all the cases and will avoid conflicting judgments.



4. Reply has been filed on behalf of the Respondents opposing the transfer on the ground that Special Courts have been designated by Notifications for trial of cases pertaining to offences under Section 138 of the NI Act and the procedure is totally different. Moreover, in the complaint cases under Section 138, Respondents have only to show that there was no legally enforceable debt payable by them as they had already paid the loan amount of Rs.8 lac and it was the Petitioner who had misused the cheques issued by the Respondents, whereas in the FIR case, which is a State case, Respondents will have to undergo a long-drawn trial. Moreover, summons case and warrants case cannot be clubbed together. Petitioner has not brought forth any reason for transfer, save and except, that there will be conflicting decisions, which cannot be a reason to seek transfer for cases triable by designated Courts.

5. Having heard learned counsel for the Petitioner and learned counsel for the Respondents, this Court finds no reason to transfer the complaint cases under Section 138 NI Act to the Court of learned CMM where criminal trial is ongoing in case FIR No. 13/2015. The respective cases are at different stages and procedures required to be followed for trial of complaint case and for prosecution of the State case in the FIR are wholly different. Special Courts have been designated for trial of complaints under Section 138 NI Act and one of the objects is expeditious disposal to keep up the sanctity and public confidence in commercial transactions. In the complaint cases under Section 138 NI Act, there will arise statutory presumptions in favour of the complainant and Respondents, on the other hand, are entitled to raise a defence and prove that there is no legally enforceable debt, as is being raised in the present case. Therefore, in my



view, it would not sub-serve the interest of either party if the complaint cases are clubbed with the State case in FIR No. 13/2015, which is not likely to conclude soon.

6. Accordingly, the present transfer petition is dismissed.

JYOTI SINGH, J

FEBRUARY 16, 2024/ssc