



2024:DHC:8246



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*IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 21.10.2024

+ CRL.M.C. 8292/2024

SUJATAN K. S.

.....Petitioner

Through: Mr. Anindya Malhotra, Mr. Shaurya
Lamba and Mr. Kartik Wadhwa,
Advs.

versus

M/S APPOLO CRANES PVT LTD & ORS.Respondents

Through: Mr. Arjit Kumar Gola, Adv.

CORAM:**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

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J U D G M E N T**ANOOP KUMAR MENDIRATTA, J (ORAL)****CRL.M.A. 31695/2024**

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.M.C. 8292/2024, CRL.M.A. 31696/2024

1. A petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') read with Article 227 of the Constitution of India has been preferred on behalf of the petitioners for setting aside order dated 15.07.2024 passed by learned ASJ-09, West District, Tis Hazari Courts, New Delhi in Criminal Revision No.32/2023 and summoning order dated 09.12.2015 passed by learned MM (NI Act) West 03, Tis Hazari Courts, New Delhi with reference to proceedings under Section 138 Negotiable



Instruments Act, 1881 (NI Act).

2. Issue notice. Learned counsel for respondents appears on advance notice and accepts notice.

3. In brief, proceedings under Section 138 NI Act were initiated on behalf of the respondent on account of dishonour of cheques, returned vide Return Memo dated 09.01.2012. During pendency of the complaint before the learned Trial Court, in view of judgment passed by Hon'ble Apex Court in ***Dashrath Rupsingh Rathod v. State of Maharashtra & Anr.***, (2014) 9 SCC 129 dated **01.08.2014**, the complaint was directed to be returned to the respondent (complainant in proceedings under Section 138 NI Act) on 18.11.2014. In ***Dashrath Rupsingh Rathod v. State of Maharashtra & Anr.*** (supra), it was held that the place, situs or venue of judicial inquiry and trial of offence must logically be restricted to where the drawee bank is located. The complaint was thereafter collected by the respondent on 06.11.2015 and re-filed on 04.12.2015, which was taken up on assignment on 09.12.2015 and the petitioner herein was summoned as an accused.

4. Aggrieved by the aforesaid summoning order dated 09.12.2015, a Revision Petition was preferred on behalf of the accused (petitioner herein) challenging the same. Amongst other grounds *inter alia*, the grievance of the petitioner is that since complainant did not receive back the complaint from the learned Trial Court and re-file the same within 30 days of 18.11.2014 as stipulated in ***Dashrath Rupsingh Rathod v. State of Maharashtra & Anr.*** (supra), the summoning order is bad in law.

5. Revision Petition preferred on behalf of the petitioner along with connected case (M/s Preethi Engineering Enterprises & Anr. v. M/s Appolo Cranes Pvt. Ltd., CR No.31/2023) was dismissed vide common order dated



15.07.2024.

6. Learned counsel for the petitioner relying upon order dated 28.11.2023 passed by Hon'ble Apex Court in ***Sunil Mantri v. Maharashtra Savings & Anr., SLP (Crl) 15076/2023***, submits that proceedings before the learned Trial Court be stayed since a similar issue is pending consideration in the aforesaid case. Reliance is also placed upon a judgment passed by the High Court of Chhatisgarh, Bilaspur in ***M/s A.K.R. Transport v. M/s Kamakshi Shipping, CRMP No.620 of 2015***.

7. A connected petition bearing No.CRL.M.C.8212/2024 preferred on behalf of M/s Preethi Engineering Enterprises & Anr. has been dismissed by this Court vide order dated 18.10.2024 for the reasons recorded in paras 6 to 8, which are reproduced herein for reference:

“6. The reasons recorded by the learned Revisional Court vide impugned order dated 15.07.2024 in paras 11 to 14 may be beneficially referred :

“11. It is evident from the Trial Court record that complainant/ respondent after dishonor of the cheque sent a demand notice dated 27.01.2012 and since the cheque amount remain unpaid, respondent instituted complaint case on 07 .03 .2012 that is well within the prescribed limitation period. So, it is not the case here that respondent had not filed the case within limitation period but the situation of re-filing arose only after passing of judgment passed by Hon'ble Apex Court in "Dashrath Rupsingh Rathore's case.

12. It is matter of record that complaint case was ordered to be returned to respondent vide orders dated 18.11.2014, but the same received by complainant on 06.11.2015 and re-filed on 09.12.2015.

13. Hon'ble Apex Court in case titled as “Apparel Export Promotion Council v. M/s Collage Culture & Others” bearing SLP (Crl) No. 3987/2020 has observed as under:

We have heard Shri Kuljeet Rawal, learned counsel appearing on behalf of the appellant and Shri Dhiraj, learned counsel appearing on behalf of the respondent. Considering the fact that



the original Court – Patiala House Court passed an order returning the original complaint to present it before the appropriate Court having jurisdiction, i. e. Saket Court on 25.08.2014, the physical copy of which was received by the complainant on 13.10.2015 and thereafter the complaint was refiled with the Saket Court on 4.11.2015, it can be said that the complaint was refiled before the appropriate Court having jurisdiction – Saket Court within a period of 30 days from the date of receipt of the physical copy of the order, the learned Metropolitan Magistrate, Saket Court ought to have taken on record the refiled complaint and ought to have proceeded further with the complaint to decide it in accordance with law and on merits. The High Court has erred in confirming the order passed by the learned Metropolitan Magistrate, Saket Court in not accepting the refiled complaint on the ground that it was refiled beyond the period of the 30 days.

It is also required to be noted that in case the view taken by the High Court is accepted in that case without deciding the complaint on merits the accused would be acquitted and the complainant would be without any remedy as the complaint filed by him will not be considered and or decided either by the Patiala House Court or by the Saket Court. The complaint filed by the complainant was required to be adjudicated upon and/or considered by at least one of the Courts. In the present case, therefore, when the complaint was refiled with the Saket Court within a period of 30 days from the date of receipt of the physical copy of the order passed by the Patiala House Court, the same ought to have been accepted by the Saket Court and the Saket Court ought to have decided and dispose of it in accordance with law. In view of the above, present appeal is allowed. The impugned order passed by the High Court in Crl. Petition No.223/2016 as well as the order passed by the learned Metropolitan Magistrate (South East), District Saket which was the subject matter before the High Court are hereby quashed and set aside. The Metropolitan Magistrate (South East), District Saket is directed to accept the refiled complaint filed by the complainant on record and thereafter proceed further with the same and decide and dispose of the same in accordance with law and on its own merits after giving an opportunity to all concerned.

14. In view of the above authoritative judgment, in present case also complainant cannot be non-suited without a trial of the case on merits specially when respondent filed the complaint initially well



within limitation period. Thus, Ld. Trial court did not commit any material irregularity or illegality while proceeding with the complaint in accordance with law. Accordingly, revision petitions stand dismissed.”

7. *It may be noticed that in order dated 28.11.2023 passed in **Sunil Mantri v. Maharashtra Savings & Anr.** (supra), reference has not been made to judgment passed in **Apparel Export Promotion Council v. M/s Collage Culture & Others** (supra).*

8. *Apparently, in order to overcome the legal position on the point of territorial jurisdiction as enunciated in **Dashrath Roopsingh Rathod v. State of Maharashtra & Anr.** (supra), Negotiable Instruments (Amendment) Act, 2015 was passed which came into operation w.e.f. 15.06.2015. By aforesaid amendment, Section 142 NI Act came to be amended and Section 142A was also inserted.*

In view of non obstante clause in sub-section (1) of Section 142A, the provisions of Code of Criminal Procedure, 1973 would have to give way. Further, despite any judgment, decree, order or direction of any Court, all cases transferred to the Court having jurisdiction under sub-section (2) of Section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 shall be deemed to have been transferred under Negotiable Instruments Act, as if that sub-section had been in force at all material times. By virtue of Section 142(2), amended through the Negotiable Instruments (Amendment) Act, 2015, the jurisdiction for initiating the proceedings for offences under Section 138 NI Act when the cheque is delivered for collection where the payee or holder in due course maintains the account, would be maintainable. Also, sub-section (1) of Section 142A provides retrospectivity to the provision by laying down that sub-section shall be deemed to ‘have been in force at all material times’.

In the facts and circumstances, this Court is of the considered opinion that no grounds are made out for interfering in the order passed in revision, since the case is



2024:DHC:8246



fully covered even by the judgment passed in Apparel Export Promotion Council v. M/s Collage Culture & Others (supra)....”

8. For the aforesaid reasons, present petition is also without any merits and is dismissed. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

OCTOBER 21, 2024/p/sd