

(2015) 04 DEL CK 0134

In the Delhi High Court

Case No : Criminal M.C. No. 1041/2015, Crl. M.A. No. 3903/2015, Crl. M.C. No. 1056/2015, Crl. M.A. No. 3941/2015, Crl. M.C. No. 1057/2015 & Crl. M.A. No. 3943 of 2015

Arun International

APPELLANT

Vs

State of Delhi and Others

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 145 (2), 145(2)

Citation : (2015) 04 DEL CK 0134

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Sanjay Sethi, Vikrant Arora and Shilpi Rathore, for the Appellant;
Satish Verma, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.

1. The abovementioned three petitions have been filed by the petitioners under Section 482 of the Code of Criminal procedure seeking relief for set aside The order dared 16th February, 2015 in the complaint case Title "M/s. Arun International vs. M/s. Shree Shyam Enterprises and Ors." bearing No. 399/1/12 passed by Metropolitan magistrate Rohini District Courts, Delhi whereby the petitions were ordered to be returned for want of territorial jurisdiction in view of the decision rendered by the Supreme Court.

2. The brief facts are that the petitioner has filed Criminal Complaint bearing No. 399/1/12 against the respondent No. 2 before the Chief Metropolitan Magistrate, Rohini Courts under the provisions of Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act") on the facts that respondent No. 2 approached to the Petitioner and purchased SS Circle, against the said purchased the petitioner issued Invoice No. 77 dated 16/08/2011, Invoice No. 78

dated 20/08/2011 and Invoice No. 79 vide dated 23rd August, 2011 in discharge of their legal debt the respondent No. 2 issued three cheques No. 927355 of dated 7th September, 2011 amounting to Rs. 2,00,000/-, cheque No. 927356 of dated 9th September, 2011 amounting to Rs. 1,50,000/- and cheque No. 927358 of dated 12th September, 2011 amounting to Rs. 1,63,133/- all drawn on Karnataka Bank Ltd., G.T. Road Branch, Delhi, on presentation all the cheques were dishonoured by the bank with remark "Funds Insufficient".

3. By order dated 2nd April, 2012 the Court take the cognizance of the Complaint of the petitioner and issued Notice to the Respondent No. 2.

4. After the notice on the next date of hearing i.e. 2nd June, 2012 respondent No. 2 failed to appear before the Court and the Court issued the bailable warrants against the respondent No. 2 /Accused. In the meantime on dated 4th October, 2012 the respondent No. 2 /Accused appeared before the Metropolitan Magistrate and after taking the bail moved the application under Section 145 (2) of the Act. Again on the next date of hearing the Respondent No. 2 failed to appear before the Court and the Court was much pleased to issue the NBW against the respondent No. 2. It is worthy to mention here that the Accused was arrested and on dated 10th April, 2013 after moving the application before the Metropolitan Magistrate got the bail.

5. On dated 11th April, 2013 the Respondent No. 2 appeared before the Magistrate and the Court frame the notice under section 251 Cr.P.C. and the Respondent No. 2 pleaded not guilty and claim trial. On the same day the Application under Section 145(2) was allowed by the Court and further allowed the Respondent No. 2 used to cross examine the petitioner/complainant.

6. Thereafter with the consent of both the parties the matter referred to the mediation centre, Rohini District Courts. The matter was settled in the mediation centre vide dated 9th October, 2013. Copy of the Settlement of Mediation Centre, Rohini District Courts, Delhi is placed on record. The statement of the respondent No. 2 was further recorded before the Magistrate in the Court on dated 25th November, 2013. Copy of the statement recorder before the Metropolitan Magistrate vide dated 25th November, 2013 is placed on record admitting the claim of the complainant and taking adjournment to pay the agreed amount. Two years were wanted by the respondent No. 2 from the date of statement made before the mediator centre and also before the Metropolitan Magistrate by virtue of the order of the Metropolitan Magistrate passed on dated 16th February, 2015 returned the complaints for want of jurisdiction. The trial court in fact did not appreciate that the ratio laid down by the Apex Court in the case of Dashrath Rupsingh Rathod v/s State of Maharashtra and Another in Criminal Appeal No. 2287 of 2009. In their Judgment the Apex Court clearly described that the category of Complaint cases where proceedings have gone to the stage of Section 145(2) or post summoning evidence has been started, those case would be tried by the Court where it is presently pending.

7. It is settled law and even otherwise the settlement of the Mediation Cell is deemed to be a decree and cannot be challenged.

8. Under these circumstances, the impugned order is illegal and contrary to law firstly once the matters are settled before the mediation centre, the trial court would have insisted the respondent No. 2 to pay the amount secondly, the decision of Dashrath Rupsingh Rathod referred by the trial court does not help the case of respondent No. 2 as the proceedings have gone to stage of Section 145(2) of the Act. The notice of the abovementioned petitions were issued but despite of service, no one appeared on behalf of respondent No. 2.

9. Hence the order dated 16th February, 2015 passed by the Metropolitan Magistrate, Rohini District Courts, Delhi in the Criminal Complaint bearing No. 399/1/12 titled as "M/s. Arun International Vs. M/s. Shree Shyam Enterprises and Ors." is quashed qua the petitioner. The Metropolitan Magistrate is directed to pass the appropriate judgment in accordance with the circumstances in the matter against the respondent No. 2 without any further delay on the basis of the statement made in mediation and to the court.

10. The present petitions are accordingly allowed. The petitioner is entitled for cost of Rs. 10,000/- each to be payable by the respondent No. 2 to the petitioner within four weeks from today. All pending applications are also disposed of accordingly.