
(2001) 08 DEL CK 0175

In the Delhi High Court

Case No : Criminal Misc. Main No. 1989 of 2001

Bips Systems Limited

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 06-08-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2001) 93 DLT 10 : (2001) 59 DRJ 686

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : Rakesh Tikku, for the Appellant; Richa Kapoor, for the Respondent

Judgement

1. This case is directed against the orders dated 15.2.2000 and 24th April, 2000 of the Metropolitan Magistrate whereby the Metropolitan Magistrate has given a date for further proceedings which is beyond 9 months. On the basis of this petition, a report was called for from the Metropolitan Magistrate who submitted the status report according to which certain difficulties were pointed out besides work-load. The learned Metropolitan Magistrate also pointed out that considerable time was lost at the pre-summoning stage due to requirement of Section 200, Cr.P.C. whereby the complainant and his witnesses are required to be examined on (sic) by the Metropolitan Magistrate. I have heard the learned Counsel for the petitioner and also for the State and have gone through the procedure that is causing this delay. Section 142 of the Negotiable Instruments Act, 1881 may be referred to as under:

Section 142:

"Cognizance of offences--Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) no Court shall take cognizance of any offence punishable u/s 138 except upon a complaint in writing made by the payee or as the case may be the holder

in due course of the cheque;

(b) such complaint is made within on month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138;

(c) no Court inferior to that of a Metropolitan Magistrate or a judicial Magistrate of the First Class shall try any offence punishable u/s 138."

2. Since the procedure prior to taking cognizance is provided u/s 142 of the Act and there is no bar to giving information on affidavit. It would suffice if in the first instance the complaint u/s 138 of the Act is filed supported by an affidavit of the complainant as also the witnesses in support if any satisfying the ingredients of Section 142, Negotiable Instruments Act.

3. Once that is done, it would be open to the Magistrate to deal with the matter after going through the complaint supported by affidavit of the complainant and of witnesses if any to proceed further without again recording statement u/s 200, Criminal Procedure Code but proceed deeming the statement to be recorded there under. This would to my mind cut-short the procedure without offending any provisions nor likely to cause prejudice to the accused.

4. I am of the view certain other directions would also be necessary in the interest of justice namely in the event the Magistrate chooses to take cognizance and issue summons, it would be appropriate that summons be sent by Registered A.D./Speed Post/Courier and also through the Court Process Server.

5. Keeping in view the aims and objects of the Act it must be the endeavor of all the Courts to expedite the hearing of cases and ensure speedy disposal and this would go a long way to infuse confidence in the system of justice.

6. In the present case, it was fixed for further proceedings on 2nd August, 2001, I am given to understand that the same has been adjourned to April 2, 2002 for summoning the accused. This in my opinion is rather a long date. It would be appropriate for the petitioner to approach the learned Metropolitan Magistrate for pre-opening the hearing.

7. The other difficulties pointed out by the learned Magistrate in the status report be taken up administratively by the Administrative Judge of Patiala House Courts who is better suited to deal with them. Copy of the order be sent to the ADJ, Patiala House and circulated to all Metropolitan Magistrates. dusty.

8. Ordered accordingly.