

\$~7

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 08th October, 2018

+ CRL.M.C. 2856/2015 and Crl. M.A. 10176/2015

SARABJIT SINGH

..... Petitioner

Through: Ms. Kanika Agnihotri, Mr.
Rudresh Jagpale and Mr. Preet Singh
Oberoi, Advocates

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Meenakshi Dahiya, APP for
the State
Mr. B.S. Arora, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had lodged a criminal case (CC no.81/08) against the third respondent alleging offence under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) having been committed, the allegations set out in the said complaint pertaining to three cheques, they bearing no.364267 dated 11.10.2007 for Rs.3,50,000/-; no.364269 dated 13.10.2017 for Rs.3,36,875/-; and no.364268 dated 15.10.2007 for Rs.3,50,000/-, all drawn on State Bank of India, it being his case that the cheques had been issued against the account of company M-Tech Developers Pvt. Ltd. (second respondent) acting through its director (third respondent) for liability due, which upon

presentation were returned unpaid by the bank with report “insufficient funds”, no payment having been made inspite of the notice of demand issued and served. In the complaint, the accused was described as Mr. Amit Jha, Director of M-Tech Developers Private Limited, ANS House, 144/2 Ashram, Mathura Road, New Delhi-110 012.

2. The Metropolitan Magistrate held inquiry and on the basis of the same issued process against the third respondent. Around the same time, the complainant had moved an application under Section 319 of the Code of Criminal Procedure, 1973 (Cr. PC) seeking the second respondent (company accused) also to be summoned additionally. The said application was, however, withdrawn and dismissed accordingly by order dated 07.07.2008 of the Metropolitan Magistrate with liberty being given for fresh application to such effect to be filed at the appropriate stage.

3. Thereafter, the case against the third respondent was taken up and put to trial on the basis of notice under Section 251 Cr. PC. When the case had reached the stage of final analysis, the complainant moved another application (with reference to the liberty earlier granted) seeking summoning of the company accused additionally under Section 319 Cr. PC, now on the basis of evidence that had come on record. This application was allowed by the Metropolitan Magistrate by order dated 22.08.2014. The second respondent thus stood summoned as an additional accused. The second respondent however, challenged the said order in the court of Sessions by criminal

revision petition (no.74/14). The revisional court accepted the contention of the second respondent and set aside the order of the Metropolitan Magistrate by its order dated 20.02.2015.

4. Aggrieved by the order of the revisional court, the present petition was filed under Section 482 Cr. PC which has been resisted by the second respondent.

5. It needs to be noted that in the criminal complaint, the second respondent was described (in para 2) as the accused company which had been acting through its director (i.e. third respondent), the liability represented by the three cheques being of the said company, the said cheques having been issued against its account. After the said cheques had been returned unpaid, the complainant had sent a legal notice of demand on 01.11.2007. It does appear that the said notice of demand was addressed to the third respondent. But then, it is also clear that the third respondent was not called upon by the said demand notice to be accountable for any personal liability. Reference was made to the three cheques, which concededly had been issued against the account of the company. The notice thus was addressed to the third respondent in his capacity as the director of the company accused, calling him upon to pay against the cheques which had been returned dishonoured. That the notice of demand was directed against the company is how the said notice of demand was understood not only by the third respondent but also by the second respondent. This is reflected by the fact that the reply dated 19.11.2007 to the demand notice was sent not

by the third respondent but for and on behalf of the company i.e. the second accused by its authorized representative.

6. In the wake of the order issuing process initially passed, the company arranged and authorized the counsel who represented the third respondent. The subsequent proceedings would also reveal that the company has been contesting the case by examining, at the stage of defence evidence, its senior accounts officer (DW1).

7. The scrutiny of the case by the revisional court for purposes of examining as to whether the Metropolitan Magistrate could have exercised the jurisdiction under Section 319 Cr. PC was apparently mis-directed. It examined the case from the perspective of its maintainability against the third respondent which was not a correct approach. It ignored the settled principle that notice to director of the company was sufficient notice to the company. [see *Bilakchand Gyanchand Co. vs. A. Chinnaswami*, (1999) 5 SCC 693]. In the present case, as already noticed, this is how both the third respondent and the second respondent understood and construed the demand notice to which reply was sent on 19.11.2007 by the second respondent.

8. In the complaint, reference was made to the company as an accused. It appears that under some confusion, inadvertently the name of the company was omitted from the array of accused. The complainant had brought an application immediately, in 2008 itself, to make suitable correction. By the time, the said application came up for consideration, the summoning order had already been passed.

Since the Magistrate did not have the power of review, there was some difficulty in entertaining the said request at that stage. This is why liberty was granted while permitting the first application under Section 319 Cr. PC to be withdrawn for such application to be moved again. The application on which the order was passed by the Metropolitan Magistrate which was set aside by the revisional court, was an application moved in exercise of such liberty.

9. Since the evidence which has come on record does show the complicity of the second respondent in the crime, the cheques in question having been issued against its account, it having received the notice of demand and not having made any payment in response thereto satisfying the claim of the complainant arising out of the said cheques, the exercise of jurisdiction by the Metropolitan Magistrate under Section 319 Cr. PC could and should not have been interfered with by the revisional court.

10. For above reasons, the petition is allowed. The impugned order of the revisional court is set aside and the order dated 22.08.2014 of the Magistrate is restored. The second respondent company consequently will face the prosecution in the criminal complaint along with the other accused, it having been summoned under Section 319 Cr. PC.

11. By order dated 24.07.2015, the learned predecessor bench had stayed the order dated 20.02.2015 of the revisional court. The court is informed that in pursuance of the said order, the proceedings before the Magistrate have continued wherein after the notice under Section

251 Cr. PC had been issued to the second respondent as well, trial is underway.

12. The petition and the application filed therewith are disposed of in above terms.

R.K.GAUBA, J.

October 08, 2018

yg

