

Hotline Electronics Ltd. and anr. Vs. State and anr.

Hotline Electronics Ltd. and anr. Vs. State and anr.

SooperKanoon Citation : sooperkanoon.com/1098085

Court : Delhi

Decided On : Nov-21-2013

Judge : Sunita Gupta

Appellant : Hotline Electronics Ltd. and anr.

Respondent : State and anr.

Advocate for Def. : Mr. Pramod Saxena, Mr. Vinod Pant

Advocate for Pet/Ap. : Mr. Mayank Bughani

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI DATE OF DECISION:

21. t NOVEMBER, 2013 + CRL.M.C. 129/2013 and Crl. M.A. 489/2013 HOTLINE ELECTRONICS LTD. & ANR. Petitioners Through: Mr. Mayank Bughani, Advocate. versus STATE & ANR. Through: Respondents Mr. Pramod Saxena, APP for the State. Mr. Vinod Pant, Advocate for R-2. CORAM: HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

: SUNITA GUPTA, J.

1. This petition under Section 482 of Code of Criminal Procedure, 1973 (for short Cr.P.C.) has been filed by the petitioner being aggrieved by the impugned order

dated 17th March, 2012 passed by learned Metropolitan Magistrate (for short MM) (although, wrongly mentioned as Additional Chief Metropolitan Magistrate in the petition), Karkardooma Courts, Delhi in C.C. No.4819/2009 titled as M/s PVR Infotech v. Hotline Electronics Limited and Another as also order dated 1st November, 2012 passed by learned Additional Sessions Judge (for short ASJ), Karkardooma Courts, Delhi whereby the revision petition has been dismissed.

2. The relevant facts giving rise to the filing of the writ petition are that on 15th October, 2009 petitioner No.2 filed FIR No.1337/2009 with Police Station Sector 20, Noida informing the police that one Pradeep Aggarwal, partner of respondent No.2 had stolen the cheques of petitioner No.1/Company and by forging the signatures on the stolen cheques presented the same for encashment. On 15th December, 2009 respondent No.2/complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short N.I. Act) alleging that respondent No.2 had supplied T.V. and electronic items to M/s Samsung India Limited on the instructions of petitioner No.1/Company during the period 2004 to 2006. The petitioner had given cheques to the respondent for payment of the alleged dues which were dishonoured on presentation. On 16th January, 2010 respondent No.2/complainant tendered his pre-summoning evidence and closed his evidence on 22nd November, 2010. An application was moved by Inspector Ramji Lal Bharti, SIS GB Nagar requesting for release of cheque filed along with the said complaint for investigation in FIR No.1337/2009 which was allowed vide order dated 26th November, 2010. After the summoning order, petitioners appeared before Court and were granted bail. An application was moved by the petitioners under Section 91 Cr.P.C. for calling FSL report in FIR No.1337/2009 on the ground that the cheque in question was forged. The application was disallowed and notice was framed under Section 251 Cr.P.C. The petitioner moved an application under Section 145(2) of the Act. Complainant also filed an application under Section 143 of the Act seeking trial of the complaint as a Summons case. While the application of the complainant was allowed no order was passed on the application under Section 145(2) filed by the petitioners. This order of MM was challenged by filing a revision petition which was dismissed. It was submitted that learned ASJ has grossly erred in rejecting the revision petition by holding that the findings of the learned Trial Court on the application of the

accused under Section 91 of Cr.P.C. were well founded. In fact, the petitioner had not challenged the said findings in the revision petition. The impugned order deserves to be set aside because application under Section 145(2) has been filed by the accused and the learned MM was obligated to recall the complainants witness for examination. The case is required to be tried as a Summons Case. Learned ASJ has failed to appreciate that learned MM has failed to record any reason as to why the complaint deserves to be treated otherwise than a Summary trial. As such, it was prayed that the impugned orders be set aside.

3. The petition has been opposed by learned counsel for respondent No.2 on the ground that filing of the petition is nothing but an attempt to delay the expeditious trial of the case. The impugned order does not suffer from any infirmity which calls for interference.

4. The grievance of the petitioner is that the petitioner had filed an application under Section 145(2) of the N.I. Act whereas complainant had moved an application under Section 143 of the Act while the learned MM allowed the application of the complainant, no order was passed on his application under Section 145(2) of N.I. Act. Although, it is true that while passing the impugned order dated 17th March, 2012 no specific order was passed by learned MM on the application under Section 145(2) of the N.I. Act moved by the accused for examination of the complainants witnesses, however, once application of the complainant was allowed and he was permitted to lead evidence as per procedure in Summons trial case. Necessary corollary will be that after examination-in-chief of the complainants witness is recorded, the accused will be entitled to cross-examine the witnesses. That being so, despite the fact that no specific order was passed on the application under Section 145(2) of N.I. Act, no prejudice has been caused to the accused for the reason that he will get ample opportunity to crossexamine the complainant and any witness examined by him. That being so, the impugned order does not call for any interference.

5. The petition is accordingly dismissed. SUNITA GUPTA (JUDGE)
NOVEMBER21 2013 AK