

Surender Sethi Vs. State

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Court : Delhi

Decided On : Nov-13-1996

Reported in : 64(1996)DLT813

Judge : S.K. Mahajan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 2626 of 1996

Appellant : Surender Sethi

Respondent : State

Advocate for Pet/Ap. : Anil Soni and; Mukta Gupta, Advs

Judgement :

S.K. Mahajan, J.

(1) The petitioner had filed a complaint under Section 138 of the Negotiable Instruments Act. The complaint was filed on 20th October, 1995 and the Court had directed the same to be listed on 3rd January, 1996 for recording of pre-summoning evidence. However, it appears that the evidence could not be recorded on 3rd January, 1996 or thereafter and finally the case was listed on 24th October, 1996 for recording the pre-summoning evidence. On 24th October, 1996, the Presiding Officer was on leave and the case was, therefore, put up before the

Link Magistrate who adjourned the same to 3rd February, 1997 for recording of the pre-summoning evidence. Being aggrieved by this order, the petitioner has filed this petition for pre-poning the date of hearing before the Metropolitan Magistrate.

(2) It is contended by learned Counsel for the petitioner that by an order passed on 16th August, 1996 this Court in *Dutt Enterprises Limited v. State*, : 64(1996)DLT815, 'had given directions to the Metropolitan Magistrates to ensure that in cases under Section 138 of the Negotiable Instruments Act, preliminary evidence should be recorded by them as early as possible on receipt of a complaint under the Act but in no case recording of such evidence shall be deferred beyond a period of two months from the date of receipt of the complaint by them.

(3) Mr. Soni submits that inspire of the petition being pending for the last one year and inspire of this order having been brought to the notice of the Court on, 24th October, 1996 gave an adjournment of more than three months and adjourned the case to 3rd February, 1997 for recording of the pre-summoing evidence. Though it is not clear from the order as to what was the reason for adjourning the case to 3rd February, 1997, however, Mr. Soni submits that the order of this Court in *Dutt Enterprises Limited's* case is being interpreted by the Metropolitan Magistrates in the manner that the same will not be applicable to the petitions which were pending prior to the passing of the order on 16th August, 1996.

(4) Though, as already stated by me above, it is not clear from the order as to what was the reason for giving an adjournment of three months, however, I will like to make it clear that the directions given in the said case will apply to all cases whether they are filed after the passing of the order dated 16th August, 1995 or they were pending on the said date. Any other interpretation will not only defeat the purpose of passing the said Order but the same will also frustrate the purpose of adding Xvii in the negotiable Instrument Act.

(5) In view of the above, I direct the Trial court to prepone the date of hearing and record statement of the petitioner in this case on a date to be fixed within one month from the receipt of this order by the court. the petitioner is directed to appear before the Metropolitan Magistrate on 29th November,1996. With these

observations the petitioner stands disposed of. copy of the order also given dusty to counsel for the petitioner.

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