

## Usha Rani vs Paramjeet Singh & Ors on 23 January, 2019

**Author: R.K.Gauba**

**Bench: R.K.Gauba**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 167/2016 & CrI.M.A. 655/2016

USHA RANI

..... Petitioner

Through: Mr. Shaad Anwar, Advocate

versus

PARAMJEET SINGH & ORS

..... Respondents

Through: Mr. H.N. Pandey, Advocate for R-1

& 2.

Mr. K.S. Ahuja, APP for the State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% 23.01.2019 The petitioner had instituted criminal complaint case (CC No. 4015/2008) in the court of Metropolitan Magistrate on 24.01.2008 alleging offence under Section 138, Negotiable Instruments Act, 1881 having been committed on account of no payment having been made inspite of the notice of demand in the wake of dishonour of cheque bearing no. 593637 dated 22.05.2007 of Rs. 2 lakhs against the account of a firm named M/s Raman International. In the complaint originally presented, the said firm M/s Raman International with three of its partners Sardar Moti Singh, Sardar Baljeet Singh and Mrs. Jasmeet Kaur were shown as prospective accused in the fray.

On the basis of preliminary evidence adduced, the Metropolitan Magistrate issued summons to all the four said persons. In the course of proceedings thereafter, evidence came on record through the mouthpiece of K.C. Pandey (CW-2), officer of the Bank of Baroda, to the effect that the CRL.M.C. 167/2016 page 1 of 3 firm also comprised of the first and second respondents herein as partners. It is on the basis of such evidence that on the application under Section 319 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the Metropolitan Magistrate, by order dated 08.05.2013 summoned the first and the second respondents as additional accused in the case. The order was challenged in the Court of Sessions invoking its revisional jurisdiction by presenting petition (C.R. no. 12/2014). In the said revision petition, a number of issues were raised including the issue that the cheque had been presented beyond the period of its validity and, thus, the offence under Section 138, Negotiable Instruments Act, 1881 was not constituted. This submission was accepted by the revisional court, by its judgment dated 29.10.2015, reliance being placed on the decision of Supreme Court reported as K.T. Lalu vs. Kalam & Another 2004 SCC Online Ker 372. The revisional court, thus, set aside the

order of the Metropolitan Magistrate summoning the first and second respondents as additional accused.

The complainant, feeling aggrieved, has come up to this Court by the petition at hand invoking its inherent power and jurisdiction under Section 482 Cr.P.C., contending that the view taken by the revisional court was erroneous since, for calculating the period of limitation, the date of issuance of the cheque was to be excluded and, in this context, reliance is placed on *Rameshchandra Ambalal Joshi vs. The State of Gujarat & Anr.* (2014) 11 SCC 759.

The petition has been pending since 2016 on account of neglect in diligent prosecution, and costs of Rs. 10,000/- was also imposed against the petitioner, by order dated 25.07.2018. The counsel present today orally CRL.M.C. 167/2016 page 2 of 3 explains that he was responsible for default as he was pre-occupied elsewhere and, therefore, the petitioner ought not suffer. In the hope that such defaults will not be caused in future by the counsel, the delay is condoned and the costs are waived.

The counsel for the first and second respondents fairly conceded that the issues raised by the petitioner with reference to *Rameshchandra Ambalal Joshi* (supra) are arguable and need fresh adjudication at the end of the revisional court, particularly, in view of the fact that the said court had sidelined the other issues which had been raised by him there being no decision rendered in such regard. He, thus, submitted that the revisional court's order dated 29.10.2015 may be set aside, but the matter may be remitted to the revisional court for fresh hearing and fresh adjudication on all issues. Ordered accordingly.

The petition at hand is allowed. The order dated 29.10.2015 in C.R. No. 12/14 is vacated and set aside. The proceedings in the said revision petition are revived on the file of the concerned court which shall take it up for fresh hearing and adjudication on 21st February, 2019. The parties to appear accordingly.

This disposes of the petition and the pending applications.

R.K.GAUBA, J.

JANUARY 23, 2019

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