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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CrI.M.C. No. 1522/2020 and CrI.M.A. Nos. 8139/2020 and
10160/2020

VIKAS BAJAJ & ANR Petitioners
Through: Mr. Anujj Chauhan, Advocate

versus

M/S KANIKA INVESTMENTS LTD. Respondent
Through: Mr.Kamal Kumar, Advocate

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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18.112020

(Through Video Conferencing)

Vide the present petition, the petitioners have sought quashing of the summoning order dated 11.3.2019 and all subsequent proceedings qua complaint case No. 1565/2019 under Section 138 of the Negotiable Instruments Act, 1881, pending before the learned Trial Court.

The petitioner is aggrieved by the impugned order dated 11.3.2019 of the learned Metropolitan Magistrate-04, Negotiable Instruments Act, West vide which it was observed to the effect:

*CC No. 1566/19, 1565/19 & 1567/19
11.03.2019*

Fresh Complaint received by way of assignment. Let it be checked and registered.

Present: Proprietor along with Ld.Counsel.

Submissions heard. Record perused.

*Complainant has tendered his pre-summoning evidence.
The AR of the complainant has been examined as CW-1 and he*

has tendered his evidence by way of affidavit as Ex.CW1/A./

The complainant has relied upon the documents which are Ex.CW1/1 to Ex.CW1/9.

Vide separate statement of the AR of the complainant, the complainant has closed pre-summoning evidence.

Heard, the arguments on the summoning of the accused and perused the record. The present complaint has been filed within the limitation period. A perusal of the complaint annexed documents and the testimony of the complainant shows that a prima facie case u/s 138 of Negotiable & instruments Act has been made out against the accused. Accordingly, fresh summons be issued to the accused on filing of PF/RC.

It has been submitted on behalf of the petitioner that the complaint filed by the respondent bearing CC No. 1565/19 was under Section 25(1) read with Section 26 of the Payment & Systems Act and Section 138 read with Section 148 read with Sections 141 and 142 of the Negotiable Instruments Act, 1881 and not simplicitor under the Negotiable Instruments Act, 1881 and that a common order could not have been passed by the learned Trial Court on 11.3.2019 in CC No. 1566/19 , 1567/19 as well as in the complaint CC No. 1565/19 i.e. the copy of which is placed as Annexure P-7 qua which the present petition has been filed assailing the impugned order dated 11.3.2019. It was submitted on behalf of the petitioner that the prescribed procedure as provided under the Payment & Settlement Systems Act,2007, for determination of the aspect of liabilities for alleged commission of offences is provided thereunder and that the offences mentioned under the said enactment are not completely in *pari materia* with the provisions under the Negotiable Instruments

Act, 1881.

In as much as during the course of the proceedings on 30.7.2020, specific submissions were made on behalf of the petitioner in reply to a specific Court query submitting to the effect that the petitioners were not connected with CC Nos. 1566/2019 and 1567/2019 in any manner nor were the petitioners aware of the status of the said cases and nor the status under which the said cases had been filed and it appeared that those cases were filed under Section 138 of the Negotiable Instruments Act, 1881 in terms of the order dated 11.3.2019.

The Registry was thus directed to download from the website of the District West the status of CC Nos. 1566/19 and 1567/19 pending before the learned Trial Court which were so downloaded and it is indicated that CC No.1566 of 2019 is a complaint under Section 25(1) read with Section 26 of the Payments & Settlement Systems Act, 2007 and Section 138 read with Section 141 & 142 of the Negotiable Instruments Act, 1881, in which the Memo of Parties reads to the effect:

*“IN THE COURT OF LD. MM, TIS HAZARI COURT DELHI
COMPLAINT CASE NO.1566 OF 2019*

IN RE:

*M/s Kanika Investment Limited
246-310, 3rd Floor, Naurang House,
21 Kasturba Gandhi Marg,
New Delhi-110001*

....Complainant

Versus

*1. M/s Tel Medias Private Limited
H-20, Near Ramesh Park, Garhwali Mohalla,
Laxmi Nagar, New Delhi-110092*

2. *Mr. Christopher Dessa*
253, GF, Mandakini Enclave,
Alakhnanda, New Delhi-110019
3. *Mrs. Lily A. Dessa*
253, GF, Mandakini Enclave,
Alakhnanda, New Delhi-110019 ...Accused.

COMPLAINT UNDER SECTION 25(1) READ WITH SECTION 26 OF PAYMENT AND SETTLEMENT SYSTEMS ACT. 2007 ("PSA") & SECTION 138 REAP WITH SECTIONS 141 & 142 OF THE NEGOTIABLE INSTRUMENTS ACT. 1881 (THE "NI ACT") AGAINST THE DRAWER/ACCUSED."

It is brought forth thereby that the respondents No. 1,2 and 3 of that complaint are not parties to the CC No. 1565/19 of which the order dated 11.3.2019 has since been assailed in the present petition by the petitioners. A copy of the complaint in CC No. 1567/19 filed by the complainant thereof i.e. the respondent to the present petition likewise has a Memo of Parties which reads to the effect:

*"IN THE COURT OF LD. MM, TIS HAZARI COURT DELHI
COMPLAINT CASE NO.1567 OF 2019*

IN RE:

*M/s Kanika Investment Limited
246-310, 3rd Floor, Naurang House,
21 Kasturba Gandhi Marg,
New Delhi-110001*

....Complainant

Versus

1. *M/s MSP Yatra Private Limited*
487-A, West Guru Angad Nagar,
Laxmi Nagar, New Delhi-110092
2. *Mr. Mahendra Singh*
487-A, West Guru Angad Nagar,
Laxmi Nagar, New Delhi-110092
3. *Mrs. Madhu Chuahan*
487-A, West Guru Angad Nagar,
Laxmi Nagar, New Delhi-110092

...Accused.

COMPLAINT UNDER SECTION 25(1) READ WITH SECTION 26 OF PAYMENT AND SETTLEMENT SYSTEMS ACT, 2007 ("PSA") & SECTION 138 REAP WITH SECTIONS 141 & 142 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881 (THE "NI ACT") AGAINST THE DRAWER/ACCUSED."

which complaint too is under Section 25(1) read with Section 26 of the Payments & Settlement Systems Act, 2007 and Section 138 read with Section 141 & 142 of the Negotiable Instruments Act, 1881, which makes it apparent that the respondent Nos.1, 2 and 3 to that petition, are not parties in the complaint No. 1565/19 of which the impugned order dated 11.3.2019 is assailed by the petitioner herein.

There are several submissions that have been made on behalf of the petitioner in relation to the non-applicability of the Payment & Settlement Systems Act, 2007 to the facts alleged in the complaint in CC No. 1565/2019.

In the circumstances of the instant case as it has been brought forth clearly through the record that even the parties to CC No. 1566/2019, 1565/2019 (out of which the impugned order arises) and CC No. 1567/19, do not relate to the same parties and apparently no such common order as the order dated 11.3.2019 could have been passed in relation to CC No. 1565/19 with other cases 1566/19 and 1567/19. Furthermore, it was also essential for the learned Trial Court to consider the aspect of the applicability or otherwise of the provisions of the Payments & Settlement Systems Act, 2007, read with the terms of the contours of the complaint in CC No. 1565/19, in as much as it has been submitted specifically on behalf of the

petitioner that the petitioner is entitled to be tried, if required, to be so tried under the appropriate provisions of law.

In the circumstances, as observed herein above that no common order as the order dated 11.3.2019 qua CC No. 1565/19 with CC Nos. 1566/19 and 1567/19 could have been passed by the learned Trial Court in the circumstances, where the parties to the case also differ and where it was incumbent on the learned Trial Court to ascertain the applicability of the provisions of Payment & Settlements Systems Act, 2007, to the averments made to the complaint in CC No. 1565/19, the impugned order dated 11.3.2019 qua CC No. 1565/2019 is thus set aside with the matter being remanded back to the learned Trial Court to consider the aspect of summoning or otherwise of the accused in CC No. 1565/19 in terms of the averments made in the complaint CC No. 1565/19 qua the applicability of the provisions of the Payment & Settlements Systems Act, 2007 read with the provisions of the Negotiable Instruments Act, 1881, which be so determined in accordance with law by the learned Trial Court and it is thus directed accordingly.

Crl.M.C. No. 1522/2020 is thus disposed of accordingly.

A copy of this order be sent to the learned Trial Court for compliance.

ANU MALHOTRA, J

NOVEMBER 18, 2020/SV