

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 3013/2009 and Crl.M.A. No. 10181/2009**

Date of Order: 2nd February, 2010

NEELU MEHTA Petitioner
! Through: Mr. Ramesh Gupta, Sr. Adv. with
Mr. Bharat Sharma, Adv.

versus

\$ STATE & ANR. Respondent
! Through: Mr. V.K. Ohri and Mr. Akshay
Malik, Advs. for R-2 & Mr. Jaideep Malik,
APP for State.

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the Reporters of local papers
may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be
reported in the Digest? No

: V.K. JAIN, J. (Oral)

1. This is a petition under Section 482 of the Code of Criminal Procedure for quashing the complaint filed against her under Section 138 of Negotiable Instruments Act. The petitioner is seeking quashing of the complaint primarily on the ground that it was barred by limitation and there was no proof of service of notice of demand before the Magistrate, at the time of passing

the summoning order.

2. The petitioner herself has stated in ground (ii) of the petition that the service of notice was effected on her on 23rd February, 2009. She has also obtained a certificate from the Postal Department to the effect that the notice was served upon her on 23rd February, 2009. The complaint has been filed on 13th April, 2009. Admittedly, 10th April, 2009, 11th April, 2009 and 12th April, 2009 being holidays, the Courts were closed on that dates. Consequently, the prescribed period of limitation expired on 13th April, 2009, if computed from 23rd February, 2009, the date on which the petitioner claims to have received the notice.

3. The learned counsel for the petitioner has referred the decision of this Court in **HDFC Bank Limited vs. Amit Kumar Singh** 160 (2009) Delhi Law Times 478. In the case of **HDFC Bank** (Supra), the learned Metropolitan Magistrate has dismissed the complaint on the ground that there was no proof of service of notice, alleged to have been issued by the complainant. A perusal of the judgment would show that the complainant had averred in the complaint that the notice “was sent/posted to the accused on 14th January, 2009 by Registered A.D. Post at his above-stated address as the same was duly provided time and again.” The registered cover, whereby the

notice was sent, was not received back and the complainant claimed that the notice had been duly served upon the accused, who despite service of notice, had failed to make payment of the amount of dishonoured cheque. As noted in para 4 of the judgment, the question before the learned Metropolitan Magistrate was, whether it could be said that the legal notice issued to the drawer of the dishonoured cheque was, in fact, served on the drawer. After discussion, this Court held:

“To recapitulate, a complainant in a case under Section 138 NI Act has at the pre-summoning stage to satisfy the learned MM that the legal notice in terms of the Section 138 (b) NI Act was in fact “served” on the drawer of the dishonored cheque. If some proof of delivery, or an internet generated or postal delivery report or a signed acknowledgement due card of the drawer, or the unserved cover with the postal endorsement is produced before the learned MM, it will be in the discretion of the learned MM to form an opinion if a presumption of service should be drawn. If the complainant chooses to file an affidavit, the deponent should state that he either went personally and found that the accused was residing at the address or is able to produce some postal certificate or an endorsement by a courier service agency that the accused is in fact residing at the address and yet refusing to accept the notice. If the affidavit merely states that the accused is residing at the address without giving any further documentary proof in support thereof such an affidavit cannot be accepted as satisfying the

requirement of Section 138 (b) read with Section 138 (c) of the NI Act.”

4. In the present case, since the petitioner herself admits having received the notice on 23rd February, 2009, this Court need not, in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure go into the question as to whether there was sufficient material available before the learned Metropolitan Magistrate, to show service of notice of demand upon the petitioner or not. The purpose of issuing a notice to the drawer of the cheque is to give him an opportunity to avoid criminal liability, by making payment of the amount of cheque(s). When the accused herself admits receipt of notice, it cannot be said that the requisite opportunity was not given to her. The relief under Section 482 of the Code of Criminal Procedure being a discretionary relief, the Court would not quash the complaint on the ground that there was no material before the Magistrate to show service of notice of demand, when the petitioner herself admits that she had received the notice on a particular date and computed from that date, the complaint is within the prescribed period of limitation. The power under Section 482 of the Code is to be exercised so as to advance the course of justice and is not intended to give any unfair advantage to the accused.

I find no merit in the petition and the same is hereby dismissed.

The Trial Court be sent back.

**V.K. JAIN
(JUDGE)**

FEBRUARY 2, 2010/BG