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

+ **CRL.M.C. 2695/2013 & Crl. M.A. No. 10337-38/2013**

PAWAN KUMAR

..... Petitioner

Through: Mr. Deepak Sabharwal, Advocate

versus

B L SINGHAL & ANR.

..... Respondents

Through: Mr. Mukesh Gupta, Additional
Public Prosecutor for respondent-
No.1- State

+ **CRL.M.C. 2708/2013 & Crl. M.A. No. 10371-72/2013**

PAWAN KUMAR

..... Petitioner

Through: Mr. Deepak Sabharwal, Advocate

versus

SUDHA SINGHAL & ANR.

..... Respondents

Through: Mr. Mukesh Gupta, Additional
Public Prosecutor for respondent-
No.1- State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

% **16.07.2013**

In the above captioned two petitions, petitioner has been summoned as an accused vide common impugned order of 6th September, 2010 in two complaints under Section 138 of *The Negotiable Instruments Act, 1881* pertaining to cheques amount of ₹2,00,000/- and ₹1,00,000/- respectively. Since petitioners counsel have addressed

Crl. M.C. No.2695/2013
Crl. M.C. No.2708/2013

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identical arguments in the above captioned two petitions, therefore, these two petitions are being disposed of by this common order.

Alleging that the necessary ingredient of there-being an existing '*debt and liability*' is lacking in the two complaints in question. Quashing of both these complaints under Section 138 of *The Negotiable Instruments Act, 1881* and the impugned order is sought by petitioner.

Learned counsel for petitioner submitted that loan was advanced by complainant to petitioner in the year 2004 whereas the cheque in question was issued in the year 2009 and the said loan was repayable within one or two years. According to petitioner's counsel, a complaint was made regarding the loss of cheques in September, 2009 and petitioner's bank account stood closed in the year 2006 and there was no occasion for petitioner to issue the two cheques in question.

During the course of hearing, attention of this Court is drawn to the cross-examination of complainant to point out that the complainant could not even understand the meaning of legal liability and so, his deposition does not even *prima facie* establish the case set out in these two complaints. In this petition, Annexure- XI reveals that the statement of petitioner under Section 313 r/w Section 281 Cr.P.C. has been recorded. Reliance placed by counsel for petitioner upon decision of Apex Court in '*A.V. Murthy Vs. B.S. Nagabasavanna*' (2002) 2 SCC 642 is misplaced, as it is on distinguishable facts. Another decision in *Krishna Kumar Cariar Vs. Share Shoppe* (2010) 12 SCC 485 relied upon by counsel for petitioner is of no help to the case of petitioner as this petition had come up before the Apex Court for consideration after contesting on merits.

Upon hearing and bare perusal of the impugned order, the two

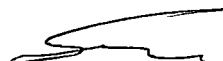
complaints in question, deposition of complainant and statement of petitioner made before the trial court, I find that this is not a fit case to invoke Section 482 Cr.P.C. to dwell into disputed question of fact, as even already recorded by the trial court, at this belated stage, this Court is not inclined to entertain this petition.

In view of dictum of Apex Court in *Krishna Kumar Cariar Vs. Share Shoppe* (2010) 12 SCC 485, which reads as under:-

"In such cases where the accused or any other person raised an objection that the trial court has no jurisdiction in the matter, the said person should file an application before the trial court making this averment and giving the relevant facts. Whether a court has jurisdiction to try / entertain a case will, at least in part, depend upon the facts of the case. Hence, instead of rushing to the higher court against the summoning order, the person concerned should approach the trial court with a suitable application for this purpose and the trial court should after hearing both the sides and recording evidence, if necessary, decide the question of jurisdiction before proceeding further with the case."

Since these two petitions have been filed belatedly and require adjudication on disputed question of facts, therefore, these two petitions are not entertained and are dismissed while not commenting on the merits of this case, lest it may prejudice petitioner at trial.

Both the petitions and the applications are accordingly disposed of.


(SUNIL GAUR)
JUDGE

JULY 16, 2013

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