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

Date of Decision: August 18, 2015

+ **CRL.M.C. 312/2014**

YOGESH CHANDRA GOYAL & ANR Petitioners
Through: Mr. Dinesh C. Pandey and Mr.
Upendra P. Singh, Advocates
versus

STATE NCT OF DELHI & ANR Respondents
Through: Ms. Manjeet Arya, Additional
Public Prosecutor for respondent-
State
Mr. Rajat Aneja and Ms.
Chandrika Gupta, Advocates for
respondent No.2

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

% **JUDGMENT
(ORAL)**

Quashing of trial court's order of 16th September, 2013 whereby petitioners have been summoned in FIR No. 308/2009 under Sections 409/420/120-B of IPC read with Sections 295/297/299 of *the Companies Act, 1956* registered at Police Station Paschim Vihar, Delhi and the Criminal Complaint No.196/1/2010 filed by respondent No.2 against petitioners, is sought on merits in this petition.

During the course of hearing, learned counsel for petitioners had informed that the matter is coming up before trial court on 26th August, 2015 and hearing on the point of charge is yet to take place. Since

petitioners have an alternate and efficacious remedy to seek discharge from trial court by urging the pleas taken herein, therefore, this Court is not inclined to exercise its inherent jurisdiction under Section 482 of Cr.P.C..

Such a course is being adopted in view of dictum of Apex Court in *Padal Venkata Rama Reddy Alias Ramu v. Kovvuri Satyanarayana Reddy & Ors. (2011) 12 SCC 437*, which is as under: -

"It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide Kavita v. State and B.S.Joshi v. State of Haryana). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specifically when the applicant may not have availed of that remedy."

Applying the afore-noted dictum of the Apex Court in *Padal Venkata Rama Reddy (supra)* to facts of instant case, this petition is disposed of with liberty to petitioners to urge the pleas taken herein before the trial court at the stage of hearing on the point of charge and if it is so done, then trial court shall deal with the pleas raised herein by passing a speaking and reasoned order. Till arguments on the point of framing of charge are concluded, personal appearance of petitioners be not insisted upon by the trial court, provided petitioners are duly represented through counsel, who does not seek adjournment. However, it is made clear that if petitioners delay the proceedings before the trial court, then petitioners will not have the benefit of exemption from

personal appearance extended by this Court. If the trial court finds that no case is made out against petitioners, then this order will not stand in the way of trial court to discharge petitioners and if trial court chooses to proceed against petitioners, then trial court shall obtain the presence of petitioners. Needless to say, if trial court chooses to frame charges against petitioners, then petitioners shall be at liberty to avail of the remedy as available in law, if so advised. It is made clear that this Court has not considered the merits of this case and it is left open for the trial court to do so after considering the pleas raised by petitioners in this petition.

This petition is accordingly disposed of while refraining to comment upon merits, lest it may prejudice petitioners before trial court.

(SUNIL GAUR)
JUDGE

AUGUST 18, 2015

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