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

Date of Decision: July 15, 2015

+ **CRL.M.C. 528/2014 & CrI.M.A.1762/2014**

RAJINDRA KUMAR Petitioner
Through: Mr. D.K. Sharma, Advocate

versus

RAVI CHADHA Respondent
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **ORDER**
(ORAL)

In a criminal complaint of cheating, petitioner has been summoned as an accused vide order of 21st January, 2013 and the said order was assailed by petitioner by way of a revision petition, which stands dismissed vide impugned order of 17th December, 2013.

While admitting this petition, notice of admission of this petition was issued to respondent-complainant, which has been received back unserved with the report that he is not residing at the given address.

Learned counsel for petitioner submits that the impugned order does not deal with the basic issue of there being no intent of cheating the complainant. Attention of this Court is drawn to the pre-summoning evidence as well as to the earnest money receipt to submit that apart from

the earnest money receipt (*Annexure P-1*), there was no other document executed between the parties and as per the aforesaid document (*Annexure P-1*), the conversion of the lease-hold property to free-hold property, was to be done after 40 days of the execution of the conveyance deed. It is also submitted that since respondent-complainant had not paid the agreed amount, therefore, the conveyance deed could not be executed.

It is pointed out that the suit for recovery filed by respondent-complainant is pending for complainant's evidence but respondent-complainant is not appearing before the civil court. It is further submitted by learned counsel for petitioner that the courts below have not considered the basic issue that the ingredients of cheating are lacking in the instant complaint and so, summoning of petitioner is bad in law. It was brought to the notice of this Court that the matter is now coming up before the trial court for hearing on the point of charge on 16th October, 2015.

Upon hearing and on perusal of the impugned order as well as the summoning order, I do find that the basic question of ingredients of cheating lacking, as urged by petitioner, has not been considered by the courts below. Nevertheless, since petitioner has 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 dictum of the Apex Court in *Padal Venkata Rama Reddy (supra)* as referred to hereinabove, this petition is disposed of with liberty to petitioner 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 uninfluenced by the impugned order. If the trial court finds that no case is made out against petitioner, then this order will not stand in the way of trial court to discharge petitioner and if trial court chooses to proceed against petitioner, then trial court shall obtain the presence of petitioner. Needless to say, if trial court chooses to frame charges against petitioner, then petitioner shall be at liberty to avail of the remedy as available in law, if so advised.

This petition and the application are accordingly disposed of while refraining to comment upon merits, lest it may prejudice petitioner before trial court.

(SUNIL GAUR)
JUDGE

JULY 15, 2015

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