

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

Date of Decision: March 09, 2015

+ CRL.M.C. 878/2013 & CrI.M.A.No.2818/2013

AKASH JAIN

..... Petitioner

Through: Dr. R.P. Gupta, Advocate

versus

JITENDER KUMAR GUPTA

..... Respondent

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Impugned order of 7th January, 2012 maintains trial court's order of 8th October, 2012 vide which petitioner's application for recall of initial order, vide which cognizance for the offence under Section 138 of *The Negotiable Instruments Act, 1881* was declined.

Respondent has not been served personally.

At the hearing, learned counsel for petitioner had submitted that Notice under Section 251 of the Cr.P.C. has been framed and petitioner has already cross-examined respondent-complainant. It is further submitted by learned counsel for petitioner that statement of petitioner herein under Section 313 r/w Section 281 of the Cr.P.C. has been recorded and in pursuance to application under Section 315 of the Cr.P.C., petitioner's evidence has also been recorded and that now the matter is coming up before trial court on 16th April, 2015.

Apex Court in *State of Orissa v. Ujjal Kumar Burdhan* (2012) 4 SCC 547 has reiterated that inherent powers of this Court are to be exercised in exceptional cases, in following words: -

“It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation.”

Upon hearing, this Court finds that proceedings under Section 138 of *The Negotiable Instruments Act, 1881* are at the advanced stage, and so, this Court is not inclined to exercise its extraordinary inherent jurisdiction to quash the impugned order.

In view of aforesaid, without commenting on the merits of this case, this petition and application are disposed of with liberty to petitioner to urge the pleas taken herein before the trial court at the stage of final arguments.

**(SUNIL GAUR)
JUDGE**

MARCH 09, 2015

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