

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

Date of Decision: February 10, 2015

+ CRL.M.C.No.515/2015

M/S PHOENIX THE HARDWARE
COLLECTION INDIA

..... Petitioner

Through: Mr. Jogy Scaria, Advocate

versus

M/S KITCHEN KRAFT INDIA

..... Respondent

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

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Crl.M.A.No.2010/2015 (Exemption)

Allowed subject to all just exceptions.

Crl.M.C.No.515/2015 & Crl.M.A.No.2009/2015

In this petition, quashing of CC No.1138/2013 titled *M/s Kitchen Kraft India v. M/s Phoenix The Hardware Collection India & Anr.*, summoning of order of 16th September, 2013 and Notice of 20th May, 2014 under Section 251 Cr.P.C., is sought on merits.

At the hearing, learned counsel for petitioner had submitted that ingredients of Section 138 of *Negotiable Instruments Act, 1881* are lacking as petitioner had neither issued cheque in question nor is an

account-holder in bank from where the cheque in question has been issued. It was submitted by learned counsel for petitioner that petitioner had replied to the statutory notice (*Annexure P-4*) but, still petitioner is tried in this complaint case without any justification and so impugned Notice, summoning order and the complaint in question deserve to be quashed.

Upon hearing and on perusal of complaint (*Annexure P-6*) summoning order (*Annexure P-8*), Notice under Section 251 Cr.P.C., I find that the basic question raised in this petition is whether petitioner holds an account in the bank from where the cheque in question has been issued and this question of fact can be determined at trial only. Such a view is being taken in view of fact that petitioner has not filed application under Section 145 Cr.P.C. and now the case is pending before trial court at the stage of petitioner's evidence.

In the considered opinion of this Court, no case for invoking inherent jurisdiction of this Court under Section 482 Cr.P.C. is made out. Petitioner is relegated to take the stand taken herein before the trial court at the time of his deposition.

During the course of hearing, it was brought to the notice of this Court that petitioner is residing in Trivandrum (Kerala) and his livelihood will be affected if he is frequently called upon to appear before trial court in this case. In the peculiarity of this case, purely as an interim measure, it is directed that trial court shall consider petitioner's application for exemption while taking into consideration the medical ailment of petitioner as well.

With aforesaid directions, this petition and application are disposed

of while not commenting upon merits of this case, lest it may prejudice petitioner before trial court.

(SUNIL GAUR)
JUDGE

FEBRUARY 10, 2015

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