I- R-201 to 205

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

Date of Decision: August 26, 2015

(i) + **CRL.M.C. 2521/2013 & Crl.M.A.No.9761/2013**

NISHA SHARMA ..... Petitioner

Through: Mr. Amit Sibal, Senior Advocate, with Mr. Santosh Mishra & Mr.Rajiv Ranjan, Advocates

versus

STATE GOVT. OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. Panna Lal Sharma, Additional Public Prosecutor for respondent-State
Mr. Anil Dwedi & Mr. Ajay Chaudhary, Advocates for respondent No.2

(ii) + **CRL.M.C. 2538/2013 & Crl.M.A.No.9802/2013**

RAM DEV SHARMA ..... Petitioner

Through: Mr. Amit Sibal, Senior Advocate, with Mr. Santosh Mishra & Mr.Rajiv Ranjan, Advocates

versus

STATE GOVT. OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. Ashish Dutta, Additional Public Prosecutor for respondent-State
Mr. Anil Dwedi & Mr. Ajay Chaudhary, Advocates for respondent No.2

(iii) + **CRL.M.C. 2724/2013 & Crl.M.A.No. 10433/2013**

INDER MUKHI ..... Petitioner

Through: Mr. Amit Sibal, Senior Advocate, with Mr. Santosh Mishra & Mr.Rajiv Ranjan, Advocates

versus

STATE GOVT. OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. G.M Farooqui, Additional Public Prosecutor for respondent-State
Mr. Anil Dwedi & Mr. Ajay Chaudhary, Advocates for respondent No.2

(iv) + **CRL.M.C. 2715/2013 & Crl.M.A.No.10392/2013**

BUBLY @ SHASHI ..... Petitioner

Through: Mr. Amit Sibal, Senior Advocate, with Mr. Santosh Mishra & Mr.Rajiv Ranjan, Advocates

versus

STATE GOVT. OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. Arun Kumar Sharma, Additional Public Prosecutor for respondent-State
Mr. Anil Dwedi & Mr. Ajay Chaudhary, Advocates for respondent No.2

(v) + **CRL.M.C. 3461/2013 & Crl.M.A.No.12672/2013**

SUMIT ..... Petitioner

Through: Mr. Amit Sibal, Senior Advocate, with Mr. Santosh Mishra & Mr.Rajiv Ranjan, Advocates

versus

STATE GOVT. OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. Satya Narain Vashisht, Additional Public Prosecutor for respondent-State
Mr. Anil Dwedi & Mr. Ajay Chaudhary, Advocates for respondent No.2

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

% (ORAL)

In the above captioned five petitions, challenge is to the trial court's order of 11th April, 2012 vide which petitioner- *Ram Dev Sharma* has been summoned for offences under Sections 420/452/468/506/323/34 of the IPC and petitioner- *Nisha Sharma, Inder Mukhi, Babli @ Shashi* and *Sumit* have been summoned for offences under Sections 323/452/34 of IPC in Criminal Complaint No.19/03/09 *Meera Vs. Shri Ram Dev Verma & ors.*.

Since the order impugned in these petitions is common and its quashing is sought on identical grounds, therefore, with the consent of counsel for the parties, these petitions have been heard together and are

being disposed of by this common judgment.

Petitioner- *Ram Dev Sharma* had challenged the trial court's order of 11th April, 2012 by way of a revision petition, which stands dismissed vide impugned order of 17th December, 2012.

At the hearing, learned senior counsel for petitioners submits that no case for summoning of petitioners in the aforesaid complaint in question is made out. Learned senior counsel for petitioners discloses that Notice under Section 251 of Cr.P.C. has not yet been framed and that matter is now coming up on 15th October, 2015 before the trial court and while entertaining these petitions, petitioners have been exempted from personally appearing before the trial court, subject to their counsel appearing.

At the hearing, it was put to learned senior counsel as to why the pleas urged herein cannot be raised before the trial court at the time of hearing on the point of framing of Notice under Section 251 of Cr.P.C.

Learned senior counsel for petitioners fairly concedes that such a course can be adopted and petitioners be granted liberty to do so. Learned senior counsel for petitioners also prays that petitioners be also permitted to appear before the trial court through counsel, especially in case of petitioner- *Inder Mukhi*, as she is 80 years old and ailing.

At the outset, it is made clear that learned counsel for petitioners has not been heard on merits, as petitioners have an alternate and efficacious remedy available to them to urge the pleas taken herein before trial court at the time of framing of Notice under Section 251 of Cr.P.C. Therefore, this Court finds that inherent powers of this Court under Section 482 of the Cr.P.C. are not required to be invoked to quash the

proceedings arising out of the complaint in question. It is being so said in view of dictum of the Apex Court in *Bhushan Kumar & Anr. Vs. State (NCT of Delhi) & Anr. AIR 2012 SC 1747*, which persuades this Court not to exercise inherent jurisdiction under Section 482 Cr.P.C. to entertain this petition. The pertinent observations of Apex Court in *Bhushan Kumar (Supra),* are as under:-

> *"17. It is inherent in Section 251 of the Code that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge-sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code."*

Further, on this aspect, the dictum of the Apex Court in *Krishan Kumar Variar v. Share Shoppe* (2010) 12 SCC is as under:-

> *"4. In our opinion, in such cases where the accused or any other person raises 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.

5. For the reasons stated hereinabove, the impugned judgment and order is set aside and the appeal is allowed. The appellant, if so advised, may approach the trial court with a suitable application in this connection and, if such an application is filed, the trial court shall after hearing both the sides and after recording evidence on the question on jurisdiction, shall decide the question of jurisdiction before further proceeding with the trial."

In view of authoritative pronouncement of the Apex Court in *Bhushan Kumar & Krishan Kumar (supra)* and applying it to the facts of this case, inherent powers of this Court under Section 482 of the Cr.P.C. are not exercised and petitioners are relegated to urge the pleas taken herein before the trial court at the hearing on the point of framing of Notice under Section 251 of Cr.P.C. and if it is so done, then trial court shall deal with the pleas raised herein by passing a speaking and reasoned order. At the stage of framing of Notice under Section 251 of Cr.P.C., trial court is not expected to function like a post office and to mechanically frame Notice, but is rather bound by law to apply its mind to find out whether *prima facie* case is made out against the accused or not. Similar view has been already taken by a coordinate Bench of this Court in *S.K. Bhalla V. State and Others* 180 (2011) DLT 219.

Needless to say, if the trial court finds that no case is made out against petitioners, then the decision of the Apex Court's in *Adalat*

Prasad Vs Rooplal Jindal and Ors. (2004) 7 SCC 338 will not stand in the way of trial court to drop the proceedings against petitioners and if trial court chooses to proceed against petitioners, then petitioners will have the remedy as available in the law. It is so said because dropping of proceedings at Notice stage cannot possibly be equated with recalling of summoning order.

Purely as an interim measure, till the arguments on the point of framing of Notice under Section 251 of Cr.P.C. are concluded, personal appearance of petitioners be not insisted upon by the trial court upon petitioners filing an application under Section 205 of Cr.P.C. alongwith his affidavit with the following undertaking: -

a. *that the proceedings of the case shall be regularly conducted by counsel (whose name shall be disclosed in application), who shall appear on behalf of petitioner(s) on every hearing and will not seek adjournment;*
b. *that petitioner(s) shall not dispute their identity as accused in the case;*
c. *that the petitioner(s) shall appear in person as and when directed in future to do so; and*
d. *that petitioner(s) shall not raise the question of prejudice in future.*

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.

This petition and the application are accordingly disposed of in

aforesaid terms while refraining to comment upon merits, lest it may prejudice either side at the hearing on the framing of Notice under Section 251 of Cr.P.C.

Dasti.

(SUNIL GAUR)
JUDGE

August 26, 2015
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