

I- 5 & 6

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

Date of Decision: August 17, 2015

+ **CRL.M.C. 3636/2012**

NAVAL KISHORE

..... Petitioner

Through: Mr. Vikas Pahwa, Senior Advocate
with Mr. Sumit Chaudhary,
Advocate & Petitioner-in-person

versus

STATE & ANR.

... Respondents

Through: Mr. G.M. Farooqui, Additional
Public Prosecutor for respondent-
State
Respondent No.2-in-person

+ **CRL.M.C. 2557/2012**

NAVAL KISHOR

..... Petitioner

Through: Mr. Vikas Pahwa, Senior Advocate
with Mr. Sumit Chaudhary,
Advocate & Petitioner-in-person

versus

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Through: Mr. G.M. Farooqui, Additional
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State
Respondent No.2-in-person

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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The above captioned two petitions disclose a very sorry state of affairs. The disputes between the parties have taken ugly turn. Father is the complainant and the son is the accused. Respondent-father was constraint to file two criminal complaints against his real son.

The first complaint is pertaining to offence under Section 448 of the IPC, which relates to an incident of 21st April, 2006. The second complaint pertains to offences under Sections 323/427/506 of IPC, which relates to incident of 18th February, 2007. In the aforesaid two complaints, petitioner has been summoned as an accused vide summoning order of 3rd September, 2010, which was unsuccessfully challenged by petitioner by way of two separate revision petitions, which stand dismissed vide impugned orders.

Since the challenge to the summoning order and the impugned orders in these petitions is on identical grounds, therefore, these petitions were heard together and are being disposed of by this common judgment.

At the hearing, it was submitted on behalf of petitioner that the cognizance of the offences taken is beyond the period of limitation and so, continuance of proceedings arising out of these two complaints would be abuse of the process of the court. It was also submitted that the ingredients of the offence alleged are missing and the offence of criminal trespass is not a continuing offence. Lastly, it was pointed out that there are several police enquiry reports which disclose that the dispute between the parties is essentially of civil nature and so, the complaints in question

and the impugned orders as well as the summoning orders deserve to be quashed.

Respondent-complainant appears in person and supports the impugned order and submits that there is no illegality in it.

At the outset, it was made clear to both the sides that this Court is not inclined to hear these petitions on merits for the reason that it was disclosed by both the sides that neither Notice under Section 251 Cr.P.C. nor Charge has been framed in these two complaint cases. In such a situation, this Court is of the considered opinion that petitioner has an alternate and efficacious remedy to urge the pleas taken herein before the trial court at the stage of hearing on the point of Notice under Section 251 Cr.P.C./ Charge, therefore, extra ordinary inherent powers under Section 482 Cr.P.C. are not required to be invoked by this Court. 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,)* as referred to hereinabove, inherent powers of this Court under Section 482 of the Cr.P.C. are not

exercised and petitioner is 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./ Charge 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 petitioner, 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 petitioner and if trial court chooses to proceed against petitioner, then petitioner 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 petitioner be not insisted upon by the trial court upon petitioner filing an application under Section 205 of Cr.P.C. alongwith an 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 on every hearing and will not seek adjournment;

b. that petitioner shall not dispute its identity as accused in the case;

c. that Authorized Representative of petitioner shall appear in person as and when directed in future to do so; and

d. that Authorized Representative of petitioner shall not raise the question of prejudice in future.

It is made clear that if petitioner delays the proceedings before the trial court, then petitioner will not have the benefit of exemption from personal appearance extended by this Court.

These petitions and applications 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.

**(SUNIL GAUR)
JUDGE**

August 17, 2015

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