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

Date of Decision: March 04, 2015

+(1) CRL.M.C. 3153/2012

RAM KAWAR (HUF) Petitioner

Through: Petitioner in person.

versus

SMC GLOBAL SECURITIES LTD. Respondent

Through: Mr. Bharat Bhushan Seth,
Advocate

AND

+(2) CRL.M.C. 3154/2012

RAM KAWAR GARG Petitioner

Through: Petitioner in person.

versus

SMC GLOBAL SECURITIES LTD. Respondent

Through: Mr. Bharat Bhushan Seth,
Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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In the above caption two petitions, quashing of complaints under Section 138 of *Negotiable Instruments Act, 1881* as well as summoning orders is sought on merits while urging similar pleas and so both the

petitions were heard together and are disposed of by this common judgment.

At the hearing, petitioner has appeared in person and has sought to argue these petitions while relying upon the decisions – 2014(2) DCR 417, 2012 CRL LJ 1463, 2012(4) JCC NI 245, 2011(3) JCC NI 171, 2012 (2) DCR 589, 2011(1) JCC NI 61, 2011(4) JCC 3035, 2012(4) JCC 2300, 2012(1) JCC 408, 2012(2) DCR 786, 2012 CRL L.J. 625, 2011(1) JCC NI 42, 1998 Crl LJ 1, 2012 Crl. LJ 1204, 2006 (2) JCC 198, 2012(1) DCR 70, 2011 (1) DCR 97, 2005SCC Crl. 242, 2010(1) Crimes 430, 2000 Crl. L.J. 1251, 2007 Crl. L.J. 2207, (2012) 5 SCC 424, 2012(2) DCR 217, 2013(2) DCR 577, 2012 Crl. L.J. 438 and 2013(2) DCR 230; to submit that there was no legally enforceable debt and the cheques in question are forged and fabricated.

Learned counsel for respondent/complainant submits that in the complaints in question the amount is of ₹26 lakhs in all and in civil proceedings, petitioner has already admitted his liability. To submit so, attention of this Court is drawn to paragraph 12 of order of 26th March, 2014 in *O.M.P. 1047/2013*, which reads as under:

“Mr. Garg has also not disputed the facts that he had issued cheques for Rs. 26 lacs, as aforesaid, in favour of the petitioner, which have been dishonoured upon presentation. He claims that these cheques were issued by him only in respect of his own personal trading account. If his own outstanding liability was only to the tune of Rs. 2 lacs, it is not explained as to why he issued two cheques for Rs. 26 lacs. The outstanding liability as shown by the petitioner in

the statement of accounts of the three accounts add upto nearly the figure of Rs. 26 lacs and, prime facie, it appears that the said cheques were issued to settle the outstanding dues in all the three accounts. This is so, particularly, because Sh. R.K. Garg had himself requested the petitioner to club his and his wife's account, and Sh. R.K. Garg is also the Karta of his own HUF and, therefore, it appears that he had issued the said cheques to settle the liability of his HUF. It appears that Sh. R.K. Garg being the head of the family, and his wife Nirmal Garg being an old lady, he was the one who was driving all the three trading accounts”.

When confronted with the aforesaid admission, petitioner submits that he has not challenged the aforesaid order as aforesaid order was to merge with the final Award to be passed in pursuance to the arbitration proceedings. It was pointed out by learned counsel for respondent that Notice under Section 251 Cr.P.C. has already been framed and petitioner has not challenged abovesaid Notice and now the matter is pending before the trial court for cross-examination of respondent/complainant but petitioner is not coming forward to do it, due to pendency of these proceedings.

In the considered opinion of this court, the afore-quoted paragraph from the order passed in *O.M.P. 1047/2013* makes it apparent that disputed questions of facts are sought to be raised which cannot be gone into proceedings under Section 482 Cr. P.C. Powers under 482 Cr. P.C. have to be exercised sparingly and only in exceptional circumstances.

It has been so reiterated by Apex Court in in *Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy*, (2011) 12 SCC 437 are as under:-

“11. Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.”

In the aforesaid view of this case, these petitions are dismissed while not commenting on merits of the case lest it may prejudice either side at trial. Let the proceedings before the trial court be expedited. Trial court be apprised of this order forthwith.

These petitions are accordingly disposed of.

(SUNIL GAUR)
JUDGE

MARCH 04, 2015

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