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

Date of Decision: April 20, 2015

+ **CRL.M.C.4198/2013 & CRL.M.A.NO.14994/2013**

RANJIT SINGH KOTHARI Petitioner

Through: Mr. Suraj Prakash & Mr. Ayan
Bhattacharya, Advocates

versus

STATE & ANR. Respondents

Through: Ms. Nishi Jain, Additional Public
Prosecutor for respondent-State
Mr. Sanjeev Narula & Ms. Meha
Rashmi, Advocates for Respondent
No.2

+ **CRL.M.C.2608/2014 & CRL.M.A.NO.8744/2014**

RANJIT SINGH KOTHARI Petitioner

Through: Mr. Suraj Prakash & Mr. Ayan
Bhattacharya, Advocates

versus

THE STATE OF NCT OF DELHI & ANR. Respondents

Through: Ms. Nishi Jain, Additional Public
Prosecutor for respondent-State
Mr. Sanjeev Narula & Ms. Meha
Rashmi, Advocates for Respondent
No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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In the above-captioned two petitions, quashing of two complaints under Section 138 of *Negotiable Instruments Act, 1881* pertaining to cheque amount of Rupees Fifty Six crores and Rupees Twenty One crores odd respectively is sought on the ground that petitioner, who is accused No.3 in these complaint cases, had resigned on 11th April, 2011 and the cheques in question were dishonoured thereafter and so, continuance of proceedings arising out of these two complaints is an abuse of process of the Court.

Since quashing of two complaints is sought on identical grounds, therefore, both the petitions were heard together and are being disposed of by this common judgment.

At the hearing, learning counsel for petitioner had submitted that resignation of petitioner from accused company has been accepted with effect from 11th April, 2011 and so there is no justification to continue the proceedings in the complaint cases in question against petitioner. Learned counsel for petitioner had submitted that there are no averments against petitioner to justify his prosecution in the complaints in question.

Aforesaid stand taken by learned counsel for petitioner is seriously disputed by learned counsel for second respondent, who has placed reliance upon decisions in *Munish Soni v. Ravinder Kumar Jain* 195 (2012) DLT 489, *Nipam Kotwal & Ors. v. Dominos Printech India Pvt. Ltd.* 146 (2008) DLT 747 *Ishan Systems Pvt. Ltd. & Ors. v. Vijaya Bank* 177 (2011) DLT 589, *Ramaswamy Athappan & Anr. v. Bharti Infotel Ltd.* 148 (2008) DLT 79, *K.P.G.Nair v. State & Ors.* 2008 (101) DRJ 704, *O.P.Aggarwal v. State & Ors.* 2009 (108) DRJ 494, *Suhas Bhand v. State of Maharashtra & Anr.* 1 (2010) BC 207 (DB), *Sriprakash Jain v. Brijesh*

Arya & Anr. 2012 Law Suit (Del) 526, *Rallis India Limited v. Poduru Vidya Bhushan & Ors.* (2011) 13 SCC 88 and *N. Rangachari v. Bharat Sanchar Nigam Ltd.* (2007) 5 SCC 108 to submit that liability under Section 138 of *Negotiable Instruments Act*, begins with the date of issuance of cheque and not on the date of its dishonour and even if petitioner had resigned before dishonor of cheque still he cannot escape from his liability as he was in accused company on the date of issuance of cheque in question.

After hearing both the sides and on perusal of complaints in question, material on record and the decisions cited, I find that there are averments against petitioner in the complaints in question and whether accused company was aware of dishonor of cheque is a question of fact, which cannot be pre-determined at this initial stage. During the course of hearing, it was brought to the notice of this Court that Notice under Section 251 Cr.P.C. has already been framed against petitioner and the case is at the evidence stage.

In view of the averments made in the complaints in question, this Court finds that petitioner's plea of his resigning prior to dishonor of cheque is a question of fact, which is required to be determined at trial and not in exercise of extraordinary jurisdiction under Section 482 Cr.P.C. 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. On this aspect pertinent observations of the Apex Court in *Ujjal Kumar (supra)* are as under: -

“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.”

Applying the afore-noted dictum to the instant case, both these petitions are disposed of while refraining to quash the complaints in question but with liberty to petitioner to urge the pleas taken herein before the trial court at the final hearing.

(SUNIL GAUR)
JUDGE

APRIL 20, 2015

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