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

Date of Decision: May 01, 2015

+ (i) **CRL.M.C. 5390/2013 & Crl.M.A.19455/2013**

DEEPAK MITRA Petitioner

Through: Mr. Amitesh Gaurav, Advocate

versus

GOVT. OF NCT & ORS.Respondents

Through: Mr.Karan Singh, Additional Public
Prosecutor for respondent-State
Ms. Perna Mehta, Advocate for
respondent No.2
Mr. Jyotindra Kumar, Advocate for
respondent No.3

+ (ii) **CRL.M.C. 5391/2013 & Crl.M.A.19459/2013**

DEEPAK MITRA Petitioner

Through: Mr. Amitesh Gaurav, Advocate

versus

STATE & ORS.Respondents

Through: Mr.M.P. Singh, Additional Public
Prosecutor for respondent-State
Ms. Perna Mehta, Advocate for
respondent No.2
Mr. Jyotindra Kumar, Advocate for
respondent No.3

+ (iii) **CRL.M.C. 5392/2013 & Crl.M.A.19462/2013**

DEEPAK MITRA Petitioner

Through: Mr. Amitesh Gaurav, Advocate

versus

STATE & ORS.

.....Respondents

Through: Mr.M.P. Singh, Additional Public
Prosecutor for respondent-State
Ms. Perna Mehta, Advocate for
respondent No.2
Mr. Jyotindra Kumar, Advocate for
respondent No.3

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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(ORAL)

In the above-captioned three petitions, quashing of proceedings arising out of three criminal complaints i.e. 2025/2006, 2023/2006 & 2024/2006, all titled *M/s. M.P. Printers v. M/s. Mitra Prakashan Pvt. Ltd. & Ors. (Annexure P/1)* is sought while relying upon decision of a coordinate Bench of this Court in *Ila Mitra v. The State of Delhi (NCT) & Ors.* in CRL.M.C.2179/2007 decided on 6th May, 2008 (*Annexure P-3*).

With the consent of both the sides, these three petitions were heard together and by this common judgment, they are being disposed of together.

Notice.

Mr.Karan Singh and Mr. M.P. Singh, learned Additional Public Prosecutors, accept notice for respondent-State and Ms. Perna Mehta, Advocate, accepts notice for contesting respondent No.2 and Mr. Jyotindra Kumar, Advocate, accepts notice for respondent No.3.

Ms. Perna Mehta, learned counsel for contesting respondent No.2, has placed on record certified copy of the trial court's order of 10th July, 2014 which indicates that petitioner has been declared Proclaimed

Offender.

At the hearing, it is submitted by learned counsel for petitioner that the case of petitioner is squarely covered by the decision in *Ila Mitra (supra)* and it is also submitted that no notice from the trial court was received by petitioner. This is strongly disputed by learned counsel for contesting respondent No.2.

Be that as it may.

A coordinate Bench of this Court in *Ila Mitra (supra)* has quashed the summoning order passed in Criminal Complaint No. 2025/2006 titled *M/s. M.P. Printers v. M/s. Mitra Prakashan Pvt. Ltd. & Ors. (Annexure P/1)* while reiterating as under: -

“Thus, what is emphasized is that actual offence has to be committed by the company and then alone the directors can become liable for the offence. When the company goes into liquidation and the cheque is presented thereafter, it cannot be said that the company has committed the offence as it is because of legal bar that it is precluded from making the payment. Once dishonour of the cheque by the bank and failure to make payment of amount by the company is beyond its control, the directors (who are in fact ex-directors) can also not be held liable”

Upon hearing and on perusal of the impugned summoning order, the decision of the Allahabad High Court in Company Petition No.35/2000 titled *Coates of India Ltd. v. Mitra Prakashan Ltd. And Ors.* rendered on 23rd May, 2005 (*Annexure P-2*) and the decision of coordinate Bench of this Court in *Ila Mitra (supra)*, this Court is of the considered opinion that the impugned summoning order qua petitioner is liable to be quashed. Accordingly, these three petitions are allowed and

the impugned summoning order is quashed qua petitioner. However, it is made clear that the three complaints of respondent No.2 under Section 138 of *the Negotiable Instruments Act, 1881* pertaining to cheque amount of ₹1.15 lac, ₹1.50 lac and ₹1.10 lac shall be adjourned *sine die* to await the outcome of the winding up proceedings of the accused-company.

In aforesaid terms, these three petitions and the applications are disposed of.

Copy of this order be given *dasti* to both sides.

(SUNIL GAUR)
JUDGE

MAY 01, 2015

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