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

Date of Decision: February 18, 2015

+ (i) **CRL.M.C. 5006/2014 & CrI.M.A.17151/2014**

ALOE PERIAL (HUF) & ANR Petitioners

Through: Mr. Ravi Gupta, Sr. Advocate,
with Mr. Ajay Gulati, Advocate

versus

M/SPIYUSH RESIDENCE PVT LTD & ANR Respondents

Through: Mr. Karan Singh, Additional Public
Prosecutor for respondent-State
Mr. Saurabh Dev Karan Singh,
Advocate for Mr. Jayant K.
Mehta, Advocate for respondent
No.1

+ (ii) **CRL.M.C. 5004/2014 & CrI.M.A.17135/2015**

ALOE PERIAL (HUF) & ANR Petitioners

Through: Mr. Ravi Gupta, Sr. Advocate,
with Mr. Ajay Gulati, Advocate

versus

M/SPIYUSH RESIDENCE PVT LTD & ANR Respondents

Through: Mr. Karan Singh, Additional Public
Prosecutor for respondent-State
Mr. Saurabh Dev Karan Singh,
Advocate for Mr. Jayant K.
Mehta, Advocate for respondent
No.1

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Quashing of Criminal Complaints No.8321/1 and 8320/1 both under Section 138 of *The Negotiable Instruments Act, 1881* titled *M/s. Piyush Residence Private Ltd. v. Mr. Bhanwar Lal Periwal & Ors.* and the summoning order of 4th September, 2014 is sought on merits in the above captioned two petitions.

Since aforesaid quashing is sought on identical grounds, therefore, with the consent of learned counsel for the parties, both these petitions are being heard together and by this common judgment, they are being disposed of.

During the course of hearing, learned senior counsel for petitioners had submitted that complainant/respondent No.1 herein had filed a complaint under Section 138 of *the Negotiable Instruments Act, 1881* against M/s. Bhanwar Lal Periwal, who was proprietor of M/s. Pranav Enterprises. He also submitted that the complainant/respondent No.1 had advanced a loan of ₹2 crores to M/s. Pranav Enterprises and an agreement was executed on 17th May, 2013 to this effect. He further submitted that M/s. Pranav Enterprises is a proprietorship concern to Mr. Bhanwar Lal Periwal and the cheque in question was signed by Mr. Bhanwar Lal Periwal on behalf of M/s. Pranav Enterprises. Learned senior counsel for petitioner also submitted that petitioners have no concern with M/s. Pranav Enterprises. Reliance was placed by learned senior counsel for petitioner upon decisions in *Kamal Kumar & Anr. v. K.G. Dutta & Anr.* 184 (2011) DLT 744, *Mahendra M. Malviya & Ors. v. Bhagwan Singh T.*

Rajput & Anr. 205 (2013) DLT 109, *Shiv Kumar Verma and Anr. v. Manoj Pandey* 2010 IX AD (Delhi) 295, *Vinod Zaveri & Ors. v. Metallica Industries Ltd.* 165 (2009) DLT 697 and *Raghu Lakshminarayanan v. Fine Tubes* (2007) % SCC 103.

At the hearing, it was disclosed by learned senior counsel for petitioners that Notice under Section 251 of Cr.P.C. has not yet been framed and the next date before trial court is 23rd February, 2015.

At the outset, it is made clear that learned senior counsel for petitioners has not been heard on merits. Since petitioners have an alternate and efficacious remedy available 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 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 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. along with their 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 petitioners on every hearing and will not seek adjournment;*
- b. that petitioners shall not dispute their identity as accused in the case;*
- c. that the petitioners shall appear in person as and when directed in future to do so; and*
- d. that petitioners 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.

The above captioned two petitions and the 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.

Dasti.

(SUNIL GAUR)
JUDGE

FEBRUARY 18, 2015

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