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

Judgment delivered on: 15th December,2015

\+ **<u>CRL.M.C. 5091/2014</u>**

ANITA KHANNA ..... Petitioner

Represented by:Mr. R.K. Trakru, Mohd. Sajid and Ms. Bela Khattar, Advs.

versus

JAFFREY EXPORTS PVT LTD & ANR ..... Respondents

Represented by:Mr. Naresh Kr. Basoya, Adv. for R-1.

Mr.Hirein Sharma, APP for the State .

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

<u>SURESH KAIT, J.</u> (Oral)

1. Vide the present petition, the petitioner seeks directions thereby setting aside the order dated 22.11.2013 whereby the learned Trial Court issued summons against the petitioner.

2. The respondent filed a complaint case before the Trial Court vide CC No.27/1/2012 and thereto has examined himself as CW-1 in pre- summoning evidence. Thereafter, considering the averments of the complaint and evidence of CW-1, the Trial Court vide order dated 22.11.2013 issued summons against the petitioner along with other co-accused.

3. The facts of the case are that the complainant/respondent supplied goods worth US$ 68531.70 to M/S Angelique Apparel Inc. of which accused no.2 and 3 are directors through accused no.1 who

works as an agent. The respondent company shipped goods to CTC Air Carrier Pvt. Ltd on 22.02.2011 which in turn sent the same to accused no.4 along with consignment invoices. Accused no.4, vide its letter dated 25.02.2011 made request for release of consignment to M/S Angelique Apparel Inc. The respondent through its exchange dated 01.03.2011 made request to accused no.4 to pay US$ 68531.70 to its bank. However, no reply was received from the said accused. The documents pertaining to the shipment were received by M/S Angelique Apparel Inc. and the petitioner was accordingly informed by the respondent. After receipt of the goods, the petitioner through mail dated 10.03.2011 raised certain quality issues to the respondent/complainant. Those issues were cleared by the respondent vide letter dated 11.03.2011, replying that goods were inspected by ITS and report was passed as per AQL standard. Subsequent thereto, the respondent made a number of requests to all the accused persons for making payments but the payment was deferred on assurance of accused persons on one pretext or the other.

4. Accused no.2 informed the respondent on 23.07.2011 through mail that the schedule of payment had been submitted to the bank for resolving the issue. However, the payment was not made despite accused no.2 and 3 have been received goods.

5. Learned counsel appearing on behalf of the petitioner submits that the petitioner had not received the goods, she is only an agent who worked between the respondent and the other co-accused. She had to receive only 5% commission which she did not even receive in

this transaction. Moreover the respondent had not filed any recovery suits against the other co-accused, however filed the criminal case. In view of the circumstances, the case is purely of a civil nature, therefore, when the respondent approached the concerned police authorities, they did not lodge the FIR. However, the respondent filed the aforesaid complaint and succeeded in it.

6. It is not in dispute that the petitioner had business relationship with the respondent in the past. As per the complaint, the allegation against the petitioner is that after gaining confidence of the respondent, the petitioner along with accused no.2, 3&4 entered into a criminal conspiracy with the object to cheat the respondent. In pursuance of the said criminal conspiracy, in the month of September, 2010, the petitioner approached the respondent for supply of readymade garments and placed order on 22.09.2010 vide Bulk Work Order No. 5079F-B and 5079B. The petitioner represented the respondent that she is acting as a buying agent on behalf of M/S Angelique Apparel Inc. As stated earlier, accused no.2 and 3 are the directors/owners of the said company. Accordingly, the respondent put the order placed by the petitioner in production. The production was inspected by inspecting agency and the petitioner on behalf of M/s Angelique Apparel Inc. agreed that the payment of the said shipment would be made only through designated bank as was done in the earlier transaction.

7. In pursuance of the said criminal conspiracy, one week prior to the dispatch of goods, the petitioner and the accused no.2 informed the respondent that the goods would be dispatched through accused

no.4 instead of the designated bank and assured the respondent that payment would be made in time and it was as good as the shipment through designated bank. However, till date the respondent has not received any amount either from the petitioner or from other accused.

8. It is not in dispute that the petitioner, being a mediator, played a main role. At this stage, it cannot be said that she had cheated the respondent or hatched the conspiracy to cheat the respondent which is a matter of trial.

9. The learned trial court only issued summon to the petitioner along with co-accused and that too by leading evidence by the respondent no.1 examining himself as CW-1.

10. In view of the above, the petitioner has failed to establish any perversity or illegality with the impugned order passed by the trial court.

11. However, liberty is granted to the petitioner to raise all her issues before the trial court at the appropriate stage.

12. At this stage learned counsel appearing on behalf of the petitioner made an oral prayer that the petitioner being a lady may be exempted from personal appearance before the trial court.

13. For the aforesaid purpose, the petitioner is at liberty to move application before the trial court and the same shall be considered by the trial court in accordance with law.

14. Finding no merit in the instant petition, the same is dismissed accordingly.

<u>Crl. M.A.No. 17420/2014</u>

Dismissed as infructuous.

SURESH KAIT
(JUDGE)

DECEMBER 15, 2015
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