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

\+ **CRL.M.C. 1898/2015 & Crl.M.A.Nos.6799-6800/2015**

MANISH PERIWAL ..... Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate with Mr. Arshdeep Singh & Mr. Krishna Dutta Multani, Advocates

versus

A C I T ..... Respondent

Through: Mr. Sanjay Kumar & Mr. Kamal Sawhney, Advocates

\+ **CRL.M.C. 1899/2015 & Crl.M.A.Nos.6801-6802/2015**

MANISH PERIWAL ..... Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate with Mr. Arshdeep Singh & Mr. Krishna Dutta Multani, Advocates

versus

A C I T ..... Respondent

Through: Mr. Sanjay Kumar & Mr. Kamal Sawhney, Advocates

**CORAM:**
**HON'BLE MR. JUSTICE SUNIL GAUR**

**O R D E R**

**% 06.05.2015**

1. Quashing of criminal complaint Nos.111/2015 [Crl.M.C.No.1898/2015] & 112/2015 [Crl.M.C.No.1899/2015] both

titled *Assistant Commission of Income Tax (ACIT) v. Manish Periwal),*and impugned order of 19th March, 2015 (*Annexure P-1 colly*) vide which petitioner has been summoned for the offence under Section 276-D of *Income Tax Act, 1961* for the Assessment Year 2006-07 is sought on merits in these petitions.

2. Since the aforesaid quashing is sought on common grounds as also the parties are same, therefore, with the consent of both the sides, these two petitions were heard together and by this common judgment, they are being disposed of.

3. During the course of hearing, learned Senior Counsel for petitioner informed that Notice under Section 251 Cr.P.C. has not yet been framed in the complaint cases in question.

4. Since Notice under Section 251 Cr.P.C. has not yet been framed, it is deemed appropriate to relegate petitioner to urge the pleas taken herein before the trial court at the hearing on the point of framing of Notice under Section 251 Cr.P.C. as the dictum of Apex Court in *Bhushan Kumar & Anr. Vs. State (NCT of Delhi) & Anr. AIR 2012 SC 1747* persuades this Court not to exercise its inherent jurisdiction under Section 482 Cr.P.C. to entertain these petitions. 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*

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*Magistrate shall explain the substance of the accusation to 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."*

5. 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.*
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> *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."*

6. It is no doubt, true that Apex Court in *Adalat Prasad Vs. Rooplal Jindal and Ors.* (2004) 7 SCC 338 has ruled that there cannot be recalling of summoning order, but seen in the backdrop of decisions of Apex Court

in *Bhushan Kumar and Krishan Kumar (supra),* aforesaid decision cannot be misconstrued to mean that once summoning order has been issued, then trial must follow. If it was to be so, then what is the purpose of hearing accused at the stage of framing Notice under Section 251 of Cr.P.C. In the considered opinion of this Court, Apex Court's decision in *Adalat Prasad (supra)* cannot possibly be misread to mean that proceedings in a summons complaint case cannot be dropped against an accused at the stage of framing of Notice under Section 251 of Cr.P.C. even if a prima facie case is not made out.

In the aforesaid view, these petitions and the applications are disposed of without commenting upon the merits of this case and with liberty to petitioner to urge the pleas taken herein before the trial court. Needless to say, the pleas raised by petitioner at the hearing on the point of Notice under Section 251 of Cr.P.C. shall be dealt with by the trial court by passing a reasoned order so that petitioner may avail of the remedies available in law, if need be. Since the voluntariness of plea pertaining to Section 276-D of Income Tax Act, 1961 goes to the root of this matter, therefore, till the hearing on the point of Notice under Section 251 of Cr.P.C. is concluded by the trial court, personal appearance of petitioner before the trial court is dispensed with provided petitioner is duly represented by counsel, who does not seek adjournment.

Copy of this order be given *dasti* under the signatures of Court Master.

**(SUNIL GAUR)**
**Judge**

**MAY 06, 2015**
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