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

Date of Decision: May 25, 2015

+ CRL.M.C.2263/2015

RAJEEV ARORA

..... Petitioner

Through: Mr. Yogesh K. Jagia, Mr. Rajeev
Kumar & Mr. Abhijit Negi,
Advocates

versus

REGISTRAR OF COMPANIES NCT OF
DELHI & HARYANA

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

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Quashing of complaint case No.3098/3 titled *Registrar of Companies v. PAN India Corporation Ltd.* under Section 97(3) of the *Companies Act, 1956* for contravention of Section 97 of the *Companies Act, 1956* and summoning order of 8th December, 2014 is sought in this petition on merits. At the hearing, learned counsel for petitioner submitted that the petitioner was a mere Director and not the whole-time Director and was not responsible for day-to-day working of the accused company and so, petitioner is nowhere responsible for the alleged non-filing of Form 5 by the accused company. Reliance was placed upon decisions in *Ravindra Narayan & Ors. v. Registrar of Companies*,

Rajasthan (1994) 81 Com.Cas.925, *Smt.G.Vijaylakshmi v. SEBI & Anr.* (2000) 100 Comp. Cas. 726, *Sesa Goa Ltd. & Ors. v. State of Maharashtra & Anr.* (2009) 151 Comp. Cas.358 (Bom.) and CrI.M.C.No.2753 & 2755 of 2005 *K.C.Palaniswamy v. Income Tax Officer* decision given on 5th September, 2008 to submit that it is a fit case for quashing the complaint in question and summoning order qua petitioner.

Upon hearing and on perusal of the complaint in question impugned summoning order, I do not find that the impugned order suffers from non-application of mind and the pleas taken in this petition are required to be considered at the stage of framing of Notice under Section 251 Cr.P.C. Since petitioner has an alternate and efficacious remedy available to him 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 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 is 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 the 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. It is so said because dropping of proceedings at Notice stage cannot possibly be equated with recalling of summoning order. Needless to say, if the trial court finds that no case is made out against petitioner, then the Apex Court's decision 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 petitioner and if trial court chooses to proceed against petitioner, then petitioner will have the remedy as available in the law.

Till the time arguments on the point of framing of Notice are heard, personal appearance of petitioner be not insisted upon by the trial court, provided petitioner is duly represented through counsel, who does not seek adjournment. However, it is made clear that if petitioner delays the proceedings before the trial court, then petitioner will not have the benefit of exemption from personal appearance extended to him by this Court.

This petition is 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.

(SUNIL GAUR)
JUDGE

MAY 25, 2015

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