

\$~24

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

Date of Decision: August 07, 2015

+ **CRL.M.C. 3158/2015 & CrI.M.A.11293-94/2015**

M K BHANDARI Petitioner
Through: Mr. Arun Sukhija, Advocate

versus

CHETAN TANWARRespondent
Through: Ms. Manjeet Arya, Additional
Public Prosecutor for respondent-
State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

%

The order impugned in this petition is the summoning order of 16th December, 2013 vide which petitioner alongwith his co-accused has been summoned for the offences under Sections 494/114 of IPC and the said order stands affirmed by the revisional court vide impugned order of 30th May, 2015.

Upon hearing and on perusal of the impugned orders, I find that it would be appropriate for petitioner to first argue at the charge stage after the pre-summoning evidence is led as he would have an opportunity to cross-examine the complainant and in the event of trial court proceeding to put petitioner on trial, then petitioner will have an opportunity to assail

the order on charge.

Since petitioner has an alternate and efficacious remedy to seek discharge from trial court by urging the pleas taken herein, therefore, this Court is not inclined to exercise its inherent jurisdiction under Section 482 of Cr.P.C.

Such a course is being adopted in view of dictum of Apex Court in *Padal Venkata Rama Reddy Alias Ramu v. Kovvuri Satyanarayana Reddy & Ors. (2011) 12 SCC 437*, which is as under: -

"It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide Kavita v. State and B.S.Joshi v. State of Haryana). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specifically when the applicant may not have availed of that remedy."

Applying the dictum of the Apex Court in *Padal Venkata Rama Reddy (supra)* as referred to hereinabove, this petition is disposed of with liberty to petitioner to urge the pleas taken herein before the trial court at the stage of hearing on the point of charge and if it is so done, then trial court shall deal with the pleas raised herein by passing a speaking and reasoned order. It is made clear that any observations made the impugned order of 30th May, 2015 will not stand in the way of petitioner when he is heard at the point of framing of charge.

At this stage, learned counsel for petitioner points out that petitioner is a senior citizen aged 70 years and is ailing and so, his

personal appearance before trial court be exempted.

If it is so, then upon petitioner filing an application for exemption from personal appearance before trial court, his personal appearance be not insisted upon by trial court till the arguments on the point of framing of charge are concluded, 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 by this Court.

If the trial court finds that no case is made out against petitioner, then this order will not stand in the way of trial court to discharge petitioner and if trial court chooses to proceed against petitioner, then trial court shall obtain the presence of petitioner. Needless to say, if trial court chooses to frame charges against petitioner, then petitioner shall be at liberty to avail of the remedy as available in law, if so advised.

This petition and the applications are accordingly disposed of while refraining to comment upon merits, lest it may prejudice petitioner before trial court.

(SUNIL GAUR)
JUDGE

AUGUST 07, 2015

s