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

+ **CRL.M.C. 194/2016**

JASPAL SINGH

..... Petitioner

Represented by: Ms. Sangeeta Jain, Advocate.

Versus

ENFORCEMENT DIRECOTRATE

..... Respondent

Represented by: Mr. Sanjeev Narula, CGSC
with Mr. Asutosh Jha, GP and
Ms. Meha Rashmi, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

ORDER

% **15.01.2016**

Crl.M.A. No. 768/2016 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. 194/2016

1. Vide the present petition, the petitioner seeks setting aside of the impugned order dated 26.10.2015 passed in Criminal Revision No.07/15 and the impugned order dated 15.12.2014 passed by the learned Additional Chief Metropolitan Magistrate, New Delhi, in Complaint No.118/01.
2. The aforesaid both orders were passed in the application filed by the petitioner under Section 245 (2) of the Code of Criminal Procedure, 1973 (Cr.P.C.), seeking his discharge in the aforesaid complaint.

3. Learned counsel appearing on behalf of the petitioner submits that as per provisions of Section 61(2) of the Foreign Exchange Regulation Act, 1973 ('FERA'), a notice be served upon the parties to show whether they had permission in their favour. The alleged opportunity notice No.T-9/523/DZ/02-Legal (OPN) was issued on 24.05.2002 whereby seven days' time was given to the petitioner to reply, however, without waiting for the reply, the complaint in question was filed on 28.05.2002 itself, i.e., prior to the lapse of the opportunity period.

4. Learned counsel for the petitioner has argued the petition on two grounds, firstly, without serving the notice upon the petitioner, the complaint in question is illegal *ab initio* and secondly, the complaint was filed much prior to expiry of seven days notice period as is the mandate of Section 61(2) FERA. Thus, counsel for the petitioner submits that the petitioner is entitled to get discharged from the said case.

5. It cannot be disputed that accused can file application under Section 245 (2) Cr.P.C. for discharge even before recording of pre-charge evidence. The case of the petitioner is not that the petitioner had permission in the present case, however, it is submitted that the complaint case filed by the respondent was not as per Section 61(2) FERA.

6. This Court has specifically asked the counsel of the petitioner whether the petitioner had permission on the date of the offence committed which is replied in negative.

7. The purpose of notice to the party is to ascertain whether the party has permission so that unnecessary criminal proceedings can be avoided. However, it is not the case of the petitioner that he had permission and without giving the proper opportunity to the petitioner, the respondent had

filed the complaint in question. Therefore, I do not find any merit in the instant case. The same is accordingly dismissed.

Crl.M.A. No. 785/2016 (for stay)

With the dismissal of the petition itself, the present application has become *infructuous*. The same is dismissed accordingly.

SURESH KAIT, J.

JANUARY 15, 2016

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