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

Judgment delivered on: 1st April, 2016

+ **CRL.M.C. No.1253/2016**

GAJENDRA NAGPAL Petitioner

Represented by: Mr.Deepak Gridhar, Advocate.

Versus

JAGDEEP BHATIA & ORS. Respondents

Represented by: None.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl.M.A. No.5409/2016 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. No.1253/2016 & Crl. M.A. 5408/2016 (Exemption from personal appearance)

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks quashing of Criminal Complaint No. 1038/1/14, under Section 138 read with Section 142 of The Negotiable Instruments Act, 1881, titled as '*Jagdeep Bhatia Vs. Unicon Securities Pvt. Ltd. & Anr.*' and the summoning order dated 01.09.2015.

2. It is submitted by learned counsel for the petitioner that Notice under Section 251 Cr.P.C. has not yet been framed and the next date before the learned Trial Court is 05.04.2016.

3. Since petitioner has an alternate and efficacious remedy available to him to urge the pleas taken herein before the learned Trial Court at the time of framing of Notice under Section 251 Cr.P.C., therefore, this Court finds that inherent powers of this Court under Section 482 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***'s case (*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 chargesheet 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 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 Vs. 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."

4. In view of authoritative pronouncement of the Apex Court in **Bhushan Kumar's** case (*supra*,) as referred to hereinabove, inherent powers of this Court under Section 482 Cr.P.C. are not exercised and petitioner is relegated to urge the pleas taken herein before the learned Trial Court at the hearing on the point of framing of Notice under Section 251 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 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. Similar view has been already taken by a Coordinate Bench of this Court in ***S.K. Bhalla V. State and Others 180 (2011) DLT 219.***

5. Needless to say, if the Trial Court finds that no case is made out against petitioner, then the decision of the Apex Court 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. It is so said because dropping of proceedings at Notice stage cannot possibly be equated with recalling of summoning order. Purely as an interim measure, till the arguments on the point of framing of Notice under Section 251 Cr.P.C. are concluded, personal appearance of petitioner be not insisted upon by the Trial Court upon petitioner filing an application under Section 205 Cr.P.C. alongwith his affidavit with the following undertaking: -

- (i). that the proceedings of the case shall be regularly conducted by counsel (whose name shall be disclosed in application), who shall appear on behalf of petitioner on every hearing and will not seek adjournment;
- (ii). that petitioner shall not dispute his identity as accused in the case;

(ii). that the petitioner shall appear in person as and when directed in future to do so; and

(iv). that petitioner shall not raise the question of prejudice in future.

6. 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.

7. This petition stands disposed of on the above terms.

8. A copy of this order be given *dasti* to the learned counsel for the parties.

APRIL 01, 2016

Sb/jg

**SURESH KAIT
(JUDGE)**

