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

+ CRL.M.C. 4091/2016

GANESH GODIYAL

..... Petitioner

Represented by: Mr. Shekar G. Devasa, Adv.

versus

M/S. NACHOLI TRADERS & ANR.

..... Respondents

Represented by: Mr. Amit Ahlawat, APP.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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03.11.2016

CrI.M.A. 17084/2016

Exemption allowed, subject to all just exceptions.

CrI.M.A. 4091/2016 & CrI.M.A. 17083/2016

1. Complaint case was filed by respondent No.1 herein under Section 138 Negotiable Instruments Act (in short 'NI Act') impleading Ganesh Godiyal proprietor of M/s Kingston Enterprises as the respondent/accused in the complaint case. In the complaint it was alleged that the petitioner herein engaged the services of the complainant for repair of various office buildings of Delhi Police which work was to be completed within six months which the complainant performed as per the agreement. Despite contacting several times, the petitioner failed to make payment and finally issued a cheque for a sum of ₹45,93,900/- bearing No.818281 dated 17th March, 2016 as part payment. When the said cheque was presented, it was returned with the remarks " Funds Insufficient". Despite legal notice dated 6th April, 2016 sent through registered AD post and speed post, the payment

was not received. Hence summons were issued against the petitioner by the learned Trial Court.

2. Contention of the learned counsel for the petitioner is that the cheque in question belongs to M/s Kingston Enterprises and neither any legal notice was issued to M/s Kingston Enterprises nor was it arrayed as a party. Since the cheque did not bear the seal of M/s Kingston Enterprises, the same was not a valid instrument and hence the complaint was not maintainable.

3. Admittedly the petitioner is the proprietor of M/s Kingston Enterprises and has signed the cheque in question. Even assuming that M/s Kingston Enterprises the firm has not been arrayed as an accused, it is well settled that the signatory of the cheque can also be separately prosecuted as held by the Supreme Court in the decision reported as (2012) 5 SCC 661 Anita Hada Vs. Godfather Travels and Tours Pvt. Ltd..

4. Petition and application are accordingly dismissed.

MUKTA GUPTA, J.

NOVEMBER 03, 2016
‘v mittal’