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

\+ CRL.M.C. 1810/2016 & Crl.M.A. 7677/2016 (stay)

VED PRAKASH VIJAY KUMAR UPADHYAYA

..... Petitioner

Represented by: Mr. Sidharth, Mr. Sujeet Gupta, Ms. Deepti, Advs.

versus

STATE OF NCT & ORS

..... Respondent

Represented by: Mr. Ashok Kr. Garg, APP. Ms. Savita Malhotra, Adv. for R-2.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

O R D E R

% **09.02.2017**

1. No steps have been taken for service of respondents No.3, 4 and 7. Learned counsel for the petitioner states that he does not press the present petition qua respondents No.3, 4 and 7. Thus they are deleted from the array of parties.

2. A perusal of the memo of parties reveal that respondent No.2 is the only contesting party because the complaint was filed by respondent No.2. In the complaint, the allegation of respondent No.2 are that the petitioner and one Manoj Jain were the current Directors of the company M/s. Zaira Diamond India Pvt. Ltd. The company and its Directors purchased various diamond articles from the complainant from the period 23rd September, 2014

to 28th March, 2015. As against the said sale invoices a total amount of ₹1,16,46,895.67 was due. The accused company remitted a sum of ₹52,07,146/- leaving behind a balance of ₹64,39,749.67. Further as against a total sum of ₹1,49,13,333.11 due towards other sale invoices the accused remitted a sum of ₹80,70,000/-. Thus the balance on the said transaction was ₹68,43,333.11. According to the complainant the total due towards the company M/s. Zaira Diamond India Pvt. Ltd. was ₹1,32,83,082.78. In discharge of the said liability seven cheques were issued by the company drawn on ICICI Bank, Ludhiana Branch, Punjab. However, on the request of accused No.2/ Manoj Jain the same were returned back and 7 fresh cheques were issued on 5th August, 2015, 15th August, 2015, 5th September, 2015, 15th September, 2015, 20th September, 2015, 5th September, 2015 and 25th August, 2015. On the representation of the petitioner and co-accused Manoj the said cheques were presented and on presentation all 7 cheques were dishonoured. Thus complaint case No.4878/2015 titled as '*M/s. D. N. Jewels Vs. M/s. Zaira Diamond India Pvt. Ltd. & Ors*.' was filed in respect of three of the dishonoured cheques. Notices issued to the company and three other accused were returned with the remarks "left without address" however notice to the petitioner was duly served.

3. The main plea of the petitioner before this Court seeking the quashing of the complaint case and the proceedings pursuant thereto including summons is that when the invoices were raised i.e. from 23rd September, 2014 to 28th March, 2015 the petitioner was not a Director.

4. As noted above, the cheques were issued from 5th August to 28th September, 2015 and the petitioner was appointed a Director of company on

17th June, 2015. Thus, on the date when the cheques in question were issued, the petitioner was the Director of the company M/s. Zaira Diamond India Pvt. Ltd. In the complaint it is specifically stated that on the assurance and instructions of the petitioner and co-accused Manoj Jain the cheques were presented which were dishonoured. Whether the petitioner can be fastened with the liability of the dishonour of cheques would be an issue which can be considered only during trial and at this stage it cannot be said that no prima facie case for issuing summons against the petitioner is made out.

5. Petition and application are dismissed.

MUKTA GUPTA, J.

FEBRUARY 09, 2017
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