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

DECIDED ON : 25th MAY, 2017

\+ **CRL.M.C. 2480/2016 & CRL.M.A.No.10659/2016**

SAMRIDH SHARMA ..... Petitioner

Through : Mr.Manish Pratap Singh, Advocate.

versus

STATE OF NCT OF DELHI & ANR. ..... Respondents

Through : Ms.Meenakshi Chauhan, APP.
Mr.Anupam Srivastava, Advocate
with Ms.Sharmistha Ghosh, Advocate
for the Respondent No.2.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. Present petition has been filed by the petitioner under Section 482 Cr.P.C. to challenge the legality and correctness of orders dated 05.03.2016 and 13.12.2013 of learned Metropolitan Magistrate by the application for dropping the proceedings under Section 138 N.I.Act was dismissed.

2. I have heard the learned counsel for the parties and have examined the file. Learned counsel for the petitioner urged that the respondent No.2 is a sleeping director and has nothing to do with the issuance of the cheques in question. The petitioner is not the Managing

Director as claimed in response to the notice under Section 251 Cr.P.C. No proceedings can be initiated under Section 138 N.I.Act against him.

3. Record reveals that in the Complaint Case No.762/2013 instituted under Section 138 N.I.Act, the petitioner among others was summoned by an order dated 13.12.2013. Notice under Section 251 Cr.P.C. dated 13.01.2015 has been served upon the petitioner. It is informed that the complainant has examined himself as CW-2 in the proceedings and at present the matter is fixed for recording defence evidence.

4. In the complaint case, the complainant categorically averred that the accused No.1 therein was a company and accused Nos.2 (the petitioner) and 3 were its directors. It was further mentioned that the respondent Nos.2 (the petitioner) and 3 were part of the senior management of the company; they are and were in-charge of the day-to-day business and management of the operational and financial affairs of the company at the relevant time. It was further disclosed that the cheques issued by the complainant were usually issued at their behest and with their full knowledge. The respondent Nos.2 and 3 had signed various documents for obtaining domestic factoring facility from the complainant. They had also guaranteed repayment by the company of the amount involved with respect to it the cheques in question. Form 20B evidencing that respondent Nos.2 and 3 were directors in the company was also placed on record. These averments were enough to proceed against the petitioner for commission of offence under Section 138 N.I.Act. The petitioner had put suggestion to the complainant in the cross-examination that the petitioner had only signed the factoring agreement and the personal guarantee and was not in-charge of day-to-day affairs of the company. It can be inferred at this stage that the

petitioner was taking active part in the affairs of the company and for that reason had put signatures on the factoring agreement and had furnished the guarantee.

5. The pleas taken by the petitioner are primarily his defence which is to be considered during trial. At this stage, when the case is fixed for defence evidence, the Trial Court did not commit any fault by not dropping the proceedings against the petitioner. The petitioner must wait for the final verdict of the Court. He will be at liberty to raise all these pleas at the time of final disposal.

6. The petition lacks in merits and is dismissed.

7. Observations in the order shall have no impact on merits of the case.

8. Pending application also stands disposed of.

(S.P.GARG)
JUDGE

MAY 25, 2017 / ***tr***