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

+ CRL.M.C. 3608/2017 & Crl. M.A. Nos. 14734-35/2017

MANISH KUMAR JAIN Petitioner
Through Mrs. Anjali J. Manish and Mr.
Priyadarshi Manish, Advs.

Versus

STATE & ANR Respondents
Through Ms. Meenakshi Chauhan, APP for the
State
Mr. Vinod Diwakar, St. Standing
Counsel with Ms. Shivee Pandey and
Mr. Sanjay Pal, Advs. for respondent
no. 2

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **07.09.2017**

Petitioner has prayed for quashing of the criminal complaint case no. 12477/2017 registered under Section 174 of the Indian Penal Code, 1860 (IPC) and the order dated 5th August, 2017 passed by the learned Chief Metropolitan Magistrate, New Delhi. In the said criminal complaint case; whereby petitioner has been summoned for the offence under Section 174 IPC. Petitioner seeks intervention of this Court under Section 482 Cr.P.C., which is the inherent jurisdiction. It is trite law that High Court will not

step-in and quash the criminal complaint case in exercise of inherent jurisdiction, at the initial stage, if the facts detailed in the complaint attract ingredients of the offence alleged. In this case, it has been specifically mentioned in the complaint that respondent no. 2 had been investigating a case in respect of mis-declaration and undervaluation of goods imported by the firms owned/controlled by the petitioner, in respect of evasion of custom duty/anti-dumping duty to the tune of ₹10 crores and above. It has been specifically mentioned in the complaint that on 22nd July, 2017, summons were issued to the petitioner for appearing before the respondent no. 2 on 25th July, 2017 for enquiries to be made under Section 108 of the Customs Act, 1962. The said summons were sent through the concerned Intelligence namely Officer Shri Sandeep Kumar. Nobody was found present in the premises. Therefore, summons were pasted on a conspicuous place of the premises. Punchnama dated 22nd July, 2017 was prepared. Despite service of summons, petitioner did not appear before the authority, thus, had committed the offence under Section 174 of the IPC.

Learned counsel for the petitioner submits that on the solitary default of the petitioner, the complaint cannot be filed. No efforts were made to serve the petitioner through registered AD post. Learned counsel for the

respondent no. 2 submits that before pasting the summons, the same were sent to the petitioner at least ten times through registered post but the same remained unserved as these were returned by the postal authority for various reasons including “premises locked”. Accordingly, Shri Sandeep Kumar, Intelligence Officer was deputed to serve the summons on the petitioner, personally; yet but again premises was found locked. Therefore, summons were pasted on a conspicuous place of the premises. Whether non-appearance of the petitioner was wilful or was beyond his control, is the subject matter of trial. A perusal of the complaint shows that, ingredients of the offence under Section 174 of the IPC have been disclosed.

Learned counsel for the petitioner has placed reliance on *Mehmood Ul Rehman vs. Khazir Mohammad Tunda and Others*, (2015) 12 Supreme Court Cases, 420 to contend that before issuing the summons, Magistrate has to apply his mind and has to be satisfied that sufficient material was there to summon the accused. The judgment relied upon by the petitioner is in the context of different facts. In this case, specific averments have been made, whereby case needs to be taken on its face value and in my view same fulfil the ingredients of the offence under Section 174 IPC. It cannot be said that learned Metropolitan Magistrate had not applied his mind while

ordering issuance of summons.

For the foregoing reasons, petition is dismissed. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

SEPTEMBER 07, 2017

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