

\$~64

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 515/2018**
M/S SUNWORLD RESIDENCY PRIVATE LIMITED & ORS
..... Petitioner
Through: Mr. Rahul Sinha, Advocate.

versus

M/S PMK IMPEX PRIVATE LIMITED THR. ITS DIRECTOR
MAYANK KHEMKA Respondent
Through: Mr. Sharad Bansal & Mr. Arpit
Marwah, Advocates.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **17.04.2018**

On behalf of the respondent, it is submitted by the learned counsel present that the vakalatnama has already been filed on behalf of the respondent and that there is no opposition to the prayer made on behalf of the petitioner without prejudice to the rights and contentions of the respondents that may be raised, for setting aside of the impugned order dated 12.12.2017 for directions to the MM concerned for conducting the requisite inquiry in accordance with law and in terms of Section 202 of the Cr.P.C., 1973 before proceeding further in relation to the aspect of summoning or otherwise of the accused in the complaint case in view of the verdict of the Apex Court in “**Abhijit Pawar vs. Hemant Madhukar Nimbalkar**” **2017(3) SCC 528** and as followed by this Court in CRL.M.C.1220/18

in “**M/S Sunworld Residency Private Limite & Ors. vs. PMK Impex Private Limited**”.

In view of the provisions of Section 202 (1) of the Cr.P.C., 1973 which provide to the effect:

202. Postponement of issue of process.-

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, May, 2018., if thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made –

(c) Where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(d) Where the complaint has not been made by a Court, unless the

*complainant and the witnesses present
(if any) have been examined on oath
under Section 200.*

In view thereof, the impugned order dated 12.12.2017 in CC No. 7847/17 is set aside inasmuch as the requisite inquiry in terms of Section 202 of the Cr.P.C., 1973 has not been conducted despite the factum that the petitioner nos. 1 to 4 are all situated at A-4, Sector-4, Noida and not within the bounds of Delhi, with directions to the learned MM concerned to conduct the requisite inquiry in accordance with law and in terms of Section 202 of the Cr.P.C., 1973 before proceeding further in relation to the aspect of summoning or otherwise of the accused in the complaint case and as submitted by the respondent, the learned MM would ensure the completion of the said proceedings under Section 202 of the Cr.P.C., 1973 within a period of two months from the date of receipt of this order.

The petition is disposed of accordingly.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

APRIL 17, 2018
NC