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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 607/2017 and Crl. M.A. no. 2611/2017
MAHABIR PRASAD AGARWAL & ANR Petitioners
Through Mr. Mohit Mathur, Sr. Advocate with
Mr. Amitabh Narenbra and Mr. M.
Chakravarty, Advs.
versus
STATE & ANR Respondents
Through Ms. Aashaa Tiwari, APP
Mr. T.N. Razday, Adv. for respondent
no. 2

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

ORDER
% **17.08.2018**

Learned Senior Counsel for the petitioners submits that petitioners have been arrayed as accused nos. 2 and 3 in the criminal complaint filed by the respondent no. 2 before the trial court against Shyam Ferro Alloys Ltd. (accused no. 1). Petitioner nos. 2 and 3 have been made as accused on the pretext that they were Chairman and Director of the accused no. 1 when the business transactions took place in the years 2012-13. Respondent no. 2 alleged that he had issued cheque bearing no. 683082 drawn on HDFC Bank Ltd., Paharganj Branch, Delhi as security cheque without date in favour of accused no. 1 on 23rd August, 2012. The said cheque was misused by accused no. 1 for filing a complaint under Section 138 of the Negotiable Instruments Act, 1881 ("the Act", for short). It was alleged by the accused

no. 1 in the said complaint that cheque no. 683082 was issued by the complainant to clear the outstanding dues towards the supply of goods by the accused no. 1 to respondent no. 2.

Learned Senior Counsel submits that trial court has summoned the petitioners under Section 406 IPC read with Section 34 IPC even though petitioners were not having any concern with the accused No. 1 in the month of August, 2012. He submits that petitioners had resigned from the accused no. 1 company way back on 13th February, 2012, that is, much prior to the issuance of the cheque. Form – 32 issued by the Registrar of Companies, West Bengal has been filed, which has not been disputed by the respondent No. 2.

For the forgoing reasons, I am of the view that continuance of complaint against the petitioners will be abuse of process of law and will result in miscarriage of justice. Accordingly, complaint case is quashed qua the petitioners only.

Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

AUGUST 17, 2018
r.bararia