

\$~65

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

+ **CRL.M.C. 1041/2018**

**SANJIV GUPTA DIRECTOR SUNWORLD RESIDENCY
PRIVATE LIMITED & ANR**

..... Petitioners

Through: Mr. Nitin K. Gupta with Mr. Rahul
Sinha, Advocates

versus

**PMK IMPEX PRIVATE LIMITED THROUGH ITS DIRECTOR
MAYANK KHEMKA**

..... Respondent

Through: Mr. Hariharan, Sr. Advocate with Mr.
Sharad Bansal & Mr. M.A. Niazi,
Advocates

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

%

27.02.2018

Crl.M.A. No. 3776-3777/2018 (Exemption)

This is an application filed on behalf of the petitioner for exemption from filing certified copies of the annexures.

Exemption allowed, subject to just exceptions.

CRL.M.C. 1041/2018 & CRL.M.A.3775/2018 (stay)

Learned counsel on behalf of the respondent is present pursuant to the advance notice. Vide the present petition the petitioner assails the impugned order dated 15.12.2017 in CC No.7996/2017 passed by the MM-02 (NI Act)/WEST/THC whereby on the basis of pre-summoning evidence in a case under Section 138 of NI Act led by M/s PMK Impex Pvt. Limited., the complainant thereof arrayed on record as respondent to the present petition,

it was observed to the effect that a prima facie offence punishable under Section 138 of NI Act was made out and that all statutory requirements had been complied with and the accused i.e. the petitioners therein had been summoned for the next date of hearing i.e. 06.04.2018. On behalf of the petitioners it has *inter alia* been submitted to the effect that all the petitioners are residents of A-4, Sector-4, Noida-231301 and it has been thus submitted on behalf of the petitioners whilst placing reliance on the verdict of the Apex Court in *Abhijit Pawar vs. Hemant Madhukar Nimbalkar & Anr.* (2017) 3 SCC 528 to contend that the requisite inquiry in terms of Section 202 Criminal Procedure Code, 1973 has not been conducted by the learned Trial Court before issuing of the summoning order which was thus vitiated.

Observations in para 23 of the verdict of the Apex Court in *Abhijit Pawar(supra)* are to the effect:

“Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 CrPC was amended in the year 2005 by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22-6-2006 by adding the words “and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction”. There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far-off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment.”

Learned counsel present on advance notice submits that without prejudice to the contentions that may be raised, he concedes to the summoning order being set aside for the requisite inquiry to be conducted in terms of Section 202 Criminal Procedure Code, 1973 as also observed by the Apex Court vide paragraph 32 in *Abhijit Pawar(supra)* which reads to the effect:

“For the aforesaid reasons, the criminal appeal arising out of SLP (Crl.) No. 9318 of 2012 is allowed thereby quashing the notice dated 24-11-2009 in respect of A-1 with direction to the learned Magistrate to take up the matter afresh qua A-1 and pass necessary orders as are permissible in law, after following the procedure contained in Section 202 Code of Criminal Procedure, 1973.”

In the circumstances of the case, as it is apparent that the petitioners are residents out of the bounds of Delhi and the requisite inquiry in terms of Section 202 Criminal Procedure Code, 1973 is indicated to have not been conducted at the time of the issuance of the summoning order, the impugned summoning order in CC No.7996/2017 dated 15.12.2017 is set aside with directions to the learned Magistrate to follow the requisite procedure in terms of Section 202 Criminal Procedure Code, 1973 which is directed to be conducted within a period of two months from the date of receipt of this order.

Copy of the order be given dasti as prayed to either side.

ANU MALHOTRA, J

FEBRUARY 27, 2018

ns