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

+ CRL.M.C. 1086/2018

SANJIV GUPTA DIRECTOR M/S SUNWORLD RESIDENCY
PRIVATE LTD. & ANR. Petitioners

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

versus

M/S PMK IMPEX PRIVATE LTD. THR. ITS DIRECTOR
MAYANK KHEMKA Respondent

Through: Mr. Sharad Bansal & Mr. M.A. Niazi,
Advocates.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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28.02.2018

Learned counsel for the respondent no. 2 is present on advance notice.

Vide the present petition, the petitioners assail the impugned order dated 16.12.2017 in CC No. 8001/17 whereby the petitioners have been summoned qua the alleged commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 on the basis of pre-summoning evidence led for the date of hearing on 31.03.2018.

On behalf of the petitioners, at the outset it has been submitted that both petitioners are situated at A-4, Sector 4 Noida and not within the bounds of Delhi and that the requisite inquiry under Section 202 of the Cr.P.C., 1973 has not been conducted by the learned Trial Court.

Reliance is *inter alia* placed on the verdict of the Apex Court in “**Abhijit Pawar vs. Hemant Madhukar Nimbalkar**” 2017(3) SCC

528 submitting to the effect that the impugned order of summoning is wholly vitiated. Reliance is also specifically placed on behalf of the petitioner qua observations in Para 23 of the verdict of the Apex Court 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 Cr.P.C. was amended in the year 2005 by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22-06-2006 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 for the respondent submits that the

authorization has since been filed on behalf of the respondent and submits that the impugned order on summoning may be set aside without any observations on the merits or demerits of the averments in the complaint bearing No. 8001/17, PS Punjabi Bagh under Section 138 of the Negotiable Instruments Act, with the directions to the learned MM concerned to conduct the inquiry in terms of Section 202 of the Cr.P.C expeditiously.

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 –

(a) Where it appears to the Magistrate that the offence complained of is

triable exclusively by the Court of Sessions; or

(b) 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.

and in view of the verdict of the Apex Court in “**Abhijit Pawar vs. Hemant Madhukar Nimbalkar**” 2017(3) SCC 528, it is apparent that the impugned order dated 16.12.2017 whereby the petitioners have been summoned without conducting of the requisite inquiry in terms of Section 202 of the Cr.P.C., 1973 has to be set aside and is thus set aside with the directions to the learned MM concerned to conduct the necessary inquiry in accordance with law 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. Further more, as submitted on behalf of 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

FEBRUARY 28, 2018/NC