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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1483/2018 & CRL.M.A. 5392-5394/2018**

SANJIV GUPTA & ANR. Petitioner
Through: None.

versus

M/S. P.M.K. IMPEX PRIVATE LIMITED Respondent
Through: Mr. Varun Agarwal, Advocate.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **22.03.2018**

Mr. Varun Agarwal, Advocate put in appearance on behalf of the respondent and submits that he has already filed his vakalatnama on behalf of the respondent.

Through the present petition, the petitioners submit to the effect that the requisite inquiry in terms of Section 202 of the Cr.P.C., 1973 has not been conducted it having been submitted that the petitioner nos. 1 & 2 reside out of the bounds of Delhi and are residents of Noida and that thus, the impugned summoning order dated 19.12.2017 of the Court of the learned MM-02, NI Act/West, Tis Hazari Court has essentially to be set aside. The averments made in the petition place *inter alia* reliance on the proceedings dated 27.02.2018 in CRL.M.C.1048/18 of this Court to similar effect.

In terms of the verdict of the Apex Court in “**Abhijit Pawar vs. Hemant Madhukar Nimbalkar**” 2017(3) SCC 528, with

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 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”.

with further observations in Para 32 of the said verdict of the Apex Court 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.”,

and the submission on behalf of the respondent qua non-opposition to the prayer to the extent that the impugned summoning order may be set aside with directions that the requisite inquiry in terms of Section 202 of the Cr.P.C., 1973 be conducted expeditiously, in view thereof, the impugned order dated 19.12.2017 of the Court of the learned MM-02, NI Act/ West in CC No. 8069/17 against the petitioner nos. 1 & 2 is set aside with directions to the learned MM concerned to follow the requisite procedure and conduct the inquiry in terms of Section 202 of the Cr.P.C., 1973 which is directed to be conducted within two months from the date of receipt of this order.

The petition is disposed of accordingly.

Copy of the order be sent to the learned Trial Court thereof.

ANU MALHOTRA, J

MARCH 22, 2018/NC