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

+ CRL.M.C. 3077/2016 and Crl. M.A. 13251/2016

VARUN SIROHI

..... Petitioner

Through: Dr. Alok K. Sharma and Mr. Sanjib Deb
Barma, Advocate

versus

STATE & ANR.

..... Respondents

Through: Mr. Ashish Dutta, APP for the State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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25.07.2018

The second respondent had instituted a criminal complaint case no.1566/2016 alleging offence under Section 138 of the Negotiable Instruments Act, 1881 having been committed on account of default in payment inspite of service of notice of demand, *inter alia*, by the petitioner, in the wake of return of the cheque bearing no.000016 dated 11.02.2016 for Rs.2,50,000/- unpaid by the bank, said cheque having been issued against the account of Krishnaanjana Technology Pvt. Ltd., with which the petitioner and one another were associated, they being the directors at the time of commission of the alleged offence. On the basis of the preliminary inquiry, the Metropolitan Magistrate issued summons to the petitioner calling him upon to appear as accused.

By the petition at hand, the petitioner invokes the jurisdiction of this court under Section 482 Cr. PC to pray for quashing of the said complaint and the summoning order submitting that the accusations in the complaints are incorrect, he having resigned from the directorship of the company earlier on account of dispute with the other director, such dispute being subject of a pending litigation.

The petitioner concededly was a director in Krishnaanjana Technology Pvt. Ltd. during the relevant period when the cause of action for filing the criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 arose in favour of the second respondent company on account of non-payment despite notice of demand in the wake of dishonour of the cheque dated 11.02.2016 issued in its favour, this leading to criminal complaint for offence under Section 138 of the N.I. Act being filed on which the impugned summoning order was passed. No incontrovertible proof about the petitioner having resigned from the company in question has been placed on record before this court. From the claim of the petitioner that he was involved in a civil dispute with the other directors which was subject matter of a civil suit which has been pending. It cannot be deduced at this stage that he cannot be held accountable in terms of Section 141 of the Negotiable Instruments Act, 1881.

The contentions raised here are a matter of defence which may be agitated on the basis of evidence that may be adduced at the trial.

Dismissed.

R.K.GAUBA, J

JULY 25, 2018/yg