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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 14th September, 2018

+ CRL. M.C. 4667/2018 & Crl.M.A. 32044-45/2018

RAJEEV GAUTAM

..... Petitioner

Through: Mr. Pulkit Agarwal, Mr. Furkan
Ahmed & Mr. Palav Agarwal,
Advts.

versus

THE STATE (GOVT. OF NCT) & ANR

..... Respondent

Through: Ms. Meenakshi Dahiya, APP
for the State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the criminal complaint (no. 2265/2017) of the second respondent (the complainant), the petitioner has been summoned as accused, by order dated 25.07.2018 of the Metropolitan Magistrate, to answer the accusations of offence under Section 25 of the Payment and Settlement Systems Act, 2007. The electronic fund transfer which is the subject matter of the said complaint was statedly initiated against the account of company M/s Macroof India Pvt. Ltd. but it failed to give credit of the corresponding amount of Rs. 80,400/- in the account of the complainant company in December, 2016, intimation having been given by the concerned bank on 16.12.2016. It is the allegation of the complainant that notice of demand was issued on 02.01.2017 through speed post to the said company, and to the

petitioner, as also one another (Vivek Kumar Sharma), but no payment was made in response thereto.

2. The petitioner has come up with the petition at hand invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C) to assail the summoning order primarily on the grounds that he has been wrongly shown in the complaint as director of the company he having resigned way back; the electronic clearing system was not initiated by him or with his consent; and that the responsibility for the payment was of the company accused or of Mr. Vivek Kumar Sharma also shown in the array.

3. The petitioner through counsel, on being asked, took the position that notice of demand dated 02.01.2017 was never received. The pleas of denial and resignation will have to be tested on the basis of evidence. The petition gives rise to questions of facts. In absence of any irrefutable proof contrary to the allegations in complaint, the averments made by the petitioner cannot be accepted at their face value. The questions of fact will have to be addressed in the inquiry or trial before the trial court [*Rajiv Thapar and Ors. Vs. Madan Lal Kapoor, (2013) 3 SCC 330*].

4. Therefore, no case is made out for this court to intervene at this stage of the process under Section 482 Cr.P.C.

5. The petition and the applications filed therewith are dismissed.

R.K.GAUBA, J.

SEPTEMBER 14, 2018/nk