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

\+ CRL.M.C. 3972/2015 & CRL.M.A. 14078/2015

SURESH KUMAR SHARMA ..... Petitioner

Through Mr. Abhir Dutt, Adv.

versus

KULBHUSHAN RAI AWASTHI ..... Respondent

Through None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **16.04.2018**

The respondent as observed vide proceedings dated 13.02.2018 has not chosen to appear on 19.04.2017, 24.07.2017, 28.08.2017, 07.09.2017, 06.12.2017 and 13.02.2018 and is not present today despite due service of the notice of the petition.

Vide directions dated 13.02.2018, the copy of the order dated 01.07.2011 sought to be impugned was directed to be placed on record. The Trial Court Record has been received and it is indicated that it was the complaint under Section 138 r.w.s. 142 of the Negotiable Instruments (Amendment) Act, 1983 that has been filed on 01.07.2011 and the petitioner vide the present petition had thus sought the quashing of the CC No. 170/11 and all proceeding emanating therefrom in the said case dated 01.07.2011.

Submissions have been made on behalf of the petitioner *inter alia* qua the aspect that the alleged dishonoured cheques were not issued by the petitioner but had been issued by the accused no. 1 even as per the averments made in the complaint in para 5 thereof which reads to the effect:-

> ***"That in the circumstances, after being cheated by the accused persons, the complainant had demanded his money from the accused persons. Initially, the accused persons tried to avoid to refund Rs.15 lakhs to the complainant and after repeated demands of the complainant and under the pressure of the common relatives, the accused no. 1 had given three account payee cheques bearing no. 513737 dated 06.05.2011, cheque no. 033875 dated 06.05.2011, cheque no. 033874 dated 06.05.2011 all amount Rs.5,00,000/- each totalling Rs.15,00,000/- drawn on State Bank of Mysore, Adarshnagar Branch, Hubli – 580032 towards the repayment of Rs.15 lakhs given by the complainant towards the sale consideration of the said flat and in discharge of his legal liability and debts to the complainant. The said cheques were handed over to the complainant by the accused at the said residence of the complainant. Initially, the complainant had refused to accept the cheque bearing no. 513737 as the accused no. 1 has made a cutting on the amount and complainant was having doubt of its encashment but on the assurance of the accused no. 1 as he told the complainant that he is having good contacts with his banker and he would get the said cheque encashed from his banker on presentation and under such circumstances, the complainant accepted the said cheque under protest.",*** and that

these were issued by his brother i.e. the accused no. 1 as per the criminal complaint and thus the reliance is placed on the copies of the cheques that are placed on record to indicate that there is signature only of the accused no. 1 thereon and that the account holder of the said account from which the cheques have been issued was also only the accused no. 1, who as per the averments in para 5 of the complaint had made the cutting on the amounts as per the complaint also and it was the accused no. 1 who had told the complainant that he had good contacts with his banker and would be encashed from his banker on its presentation as a promise of which the complainant had accepted the cheques issued by the accused no. 1. It has thus been submitted on behalf of the petitioner that the petitioner has no role whatsoever in relation to the alleged dishonoured cheques. Reliance was however sought to be placed on behalf of the petitioner on the verdict of ***Urmila Kumari Vs. Rukmani Devi & Ors. 2013 III AD (Delhi) 133,*** to submit that even if the petitioner had been a joint account holder with his brother i.e. the accused no. 1, he could not even held liable for issuance of the alleged dishonoured cheques which cheques remained unpaid due to insufficient funds in the said account in question which were not signed by him.

Be that as it may without any observations on the said submissions taking into account the factum that the complaint itself which original is before this Court in as much as the Trial Court Record has been requisitioned, indicates that the petitioner herein arrayed as the accused no. 4 to the criminal complaint in question is a resident of Hubli, Karnataka, in terms of Section 202 of the Code of Criminal Procedure, 1973 and as laid down by the Hon'ble Apex Court in ***Abhijit Pawar Vs. Hemant Madhukar Nimbalkar 2017(3) SCC 528*** and as followed by this Court in ***Sanjiv Gupta Director M/s Sunworld Residency Private Ltd. & Anr. Vs. M/s. P M K Impex Pvt. Ltd.*** in Crl. M.C. 1114/2018, the requisite inquiry in terms of

Section 202 of the Code of Criminal Procedure, 1973 having not been conducted by the Trial Court in terms of Section 202 of the Code of Criminal Procedure, 1973, the impugned summoning order dated 29.08.2011 in C.C. No. 170/11 of the Court of MM-I (East)/KKD Courts / Delhi is thus vitiated and set aside.

The Trial Court Record be returned along with the copy of this order.

The petition is disposed of accordingly.

ANU MALHOTRA, J

APRIL 16, 2018/MK