

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Order: April 26, 2019

+ **CRL.M.C. 2212/2019 & CRL.M.As. 8831-8832/2019**
+ **CRL.M.C. 2213/2019 & CRL.M.As. 8833-8834/2019**
+ **CRL.M.C. 2214/2019 & CRL.M.As. 8835-8836/2019**
+ **CRL.M.C. 2215/2019 & CRL.M.As. 8837-8838/2019**
+ **CRL.M.C. 2216/2019 & CRL.M.As. 8839-8840/2019**
+ **CRL.M.C. 2217/2019 & CRL.M.As. 8841-8842/2019**
+ **CRL.M.C. 2218/2019 & CRL.M.As. 8843-8844/2019**
+ **CRL.M.C. 2219/2019 & CRL.M.As. 8845-8846/2019**
+ **CRL.M.C. 2220/2019 & CRL.M.As. 8847-8848/2019**

SUDHIR KUMAR Petitioner
Through: Mr. Rakesh Malhotra, Advocate

Versus

STATE & ANR. Respondents
Through: Mr. M.S. Oberoi, Additional
Public Prosecutor for State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

In Proceedings under Section 138 of Negotiable Instruments Act, 1881, the challenge to impugned order in these petitions is on identical grounds and so, these petitions have been heard together and are being disposed of by this common order.

Learned counsel for petitioner submits that petitioner was not the director of accused-company at the time of supply of goods and issuance of the cheques in question and so, petitioner cannot be prosecuted in these complaints under Section 138 of the Negotiable Instruments Act, 1881.

Attention of this Court is drawn to Form No. 32 (*Annexure P-5*) to show that petitioner had resigned from the accused company on 30th March, 2011 and the transaction in question is of the period from August, 2011 to February, 2012. So, it is submitted that the impugned summoning order deserves to be quashed.

Upon hearing and on perusal of the complaints in question and impugned order, I find that petitioner is arrayed as accused No. 4 in the capacity of Chief Executive Officer of accused- company and there are allegations against him as well as his co-accused. Form No. 32 relied upon by petitioner's counsel is required to be proved at trial and so, it cannot be made the basis to quash the impugned order.

At this stage, petitioner's counsel submits that petitioner is required to appear before trial court tomorrow and at least petitioner's personal appearance be exempted, as petitioner would be duly represented by counsel on each and every date of hearing.

While refraining to quash impugned order, these petitions are disposed of, with permission to petitioner to file application seeking exemption from personal appearance, while undertaking that petitioner through counsel would regularly appear before the trial court. If it is so done, then personal appearance of petitioner be not insisted upon by trial court. However, it is made clear that trial court will be within its rights to

summon the petitioner at the stage of framing of notice under Section 251 of Cr.P.C., if required and thereafter, if an occasion arises.

Without commenting on the merits of this case, these petitions and applications are accordingly disposed of in limini, with liberty to petitioner to raise the pleas taken herein before trial court.

A copy of this order be given *dasti* under the signatures of Court Master to learned counsel for petitioner.

APRIL 26, 2019
p'ma

(SUNIL GAUR)
JUDGE

