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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CRL.M.C. 803/2016****M/S SHEBA WHEELS PVT LTD & ANR** PetitionerThrough: Ms. Asha Gupta proxy for Mr.
Vishwendra Verma, Adv.

versus

STATE OF DELHI & ANR RespondentsThrough: Mr. K.S. Ahuja, APP for the State.
Mr. Ajay Shanker & Mr. Sumit
Kumar, Advs. for R-2.**CORAM:****HON'BLE MR. JUSTICE R.K.GAUBA****ORDER**

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12.02.2019

When this matter was taken up, in its turn, in the pre lunch session, there was no appearance on behalf of the second respondent. Thus, it was passed over. When it is called out again in the post lunch session, the counsel for second respondent has appeared but now the petitioner is represented by a proxy counsel who submits Mr. Vishwendra Verma, Advocate, who was present in the forenoon, is busy elsewhere.

The petition at hand invokes the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) to seek quashing of the order dated 19.09.2011 passed by the Metropolitan Magistrate in the complaint case (CC no. 3321/2011) of the second respondent (complainant), it involving offence under Section 138, Negotiable Instruments Act, 1881. In the list of dates and, in the pleadings, reference is made to the summoning order dated 19.09.2011 passed against

the petitioners followed by 04.05.2016 to be the date of hearing before the concerned criminal court, it being clearly stated that the matter was pending at that stage before Mr. Puneet Pahwa, Metropolitan Magistrate, New Delhi at Patiala House Courts Complex. The pleadings and the list of dates at the same time would also show that the order dated 19.09.2011 was passed by another Metropolitan Magistrate Ms. Manisha Tripathi, at Dwarka Courts Complex. The petition is conspicuously silent as to in what circumstances the complaint case had moved from Dwarka courts to New Delhi courts.

In para 9 of the petition, reference is made to an earlier petition being filed (its particulars not mentioned) but it having been withdrawn, the pleading reading thus:-

“That the petitioners had filed earlier petition meanwhile the Petition was transferred and on the ground of transfer and the quashing petition was withdrawn with liberty hence, the present petition is file on the same before this Hon’ble Court.

(emphasis supplied)

On 01.03.2018, the following proceedings were recorded:-

“On behalf of the respondent No.2, copy of proceedings dated 14.3.2014 in Crl.M.C.No.1304/2014 have been submitted to submit that the petitioner needs to make submissions before the Trial Court and that the petitioner has not been putting in appearance before the Trial court in proceedings which are now listed for 15.9.2018.

On behalf of the petitioner it has been submitted that after initial cognizance taken in the complaint case after proceedings having been disposed of at Dwarka Courts, the complaint has been filed again at the Patiala House Courts and thus it is submitted on behalf of the petitioner that a fresh cognizance having been taken, the proceedings in Crl.M.C.1304/2014 do not amount to any embargo to the present proceedings.

*It is essential that the Trial Court records be requisitioned which are thus directed to be requisitioned.
List on 28th May, 2018”.*

It is clear from the above that the petitioner would not dispute that the earlier challenge to the summoning order was by CrI.M.C. 1304/2014. The counsel for the second respondent has placed before the court a copy of order dated 14.03.2014 whereby the said CrI.M.C. 1304/2014 was disposed of. To dispel the impression created by the petitioner as to “*withdrawal*” of the previous petition, the following observations captured from the first two paragraphs of the said order dated 14.03.2014 should suffice.

“Quashing of criminal complaint No.332/1/2011, under Section 138 of The Negotiable Instruments Act, 1881 titled Punjab National Bank v. M/s. Sheba Wheels Pvt. Ltd. and Ors. is sought on merits in this petition on the ground that the cheque in question is not issued to respondent- complainant and so, there is no existing debt or liability and thus continuation of proceedings arising out of the complaint in question is abuse of process of the court. However, learned counsel for petitioners submits that Notice under Section 251 of Cr.P.C. has not yet been framed.

Since petitioners have an alternate and efficacious remedy available to urge the pleas taken herein before trial court at the time of framing of Notice under Section 251 of Cr.P.C., therefore, this Court finds that inherent powers of this Court under Section 482 of the Cr.P.C. are not required to be invoked to quash the proceedings arising out of the complaint in question. It is being so said in view of dictum of the Apex Court in Bhushan Kumar and Anr. Vs. State (NCT of Delhi) and Anr. AIR 2012 SC 1747, which persuades this Court not to exercise inherent jurisdiction under Section 482 Cr.P.C. to entertain this petition”.

It must be added here that, while declining to interfere with the

summoning order, the learned single Judge deciding the earlier challenge by CrI.M.C. 1304/2014, by order dated 14.03.2014, had granted exemption from personal appearance to the petitioners, directing as under:-

“Purely as an interim measure, till the arguments on the point of framing of Notice under Section 251 of Cr.P.C. are concluded, personal appearance of petitioners be not insisted upon by the trial court upon petitioners filing an application under Section 205 of Cr.P.C. alongwith their affidavit with the following undertaking: -

a. that the proceedings of the case shall be regularly conducted by counsel (whose name shall be disclosed in application), who shall appear on behalf of petitioners on every hearing and does not seek adjournment;

b. that petitioners shall not dispute their identity as accused in the case;

c. that the petitioners shall appear in person in case they are directed to do so in future; and

d. that petitioners shall not raise the question of prejudice in future.

Needless to say, if petitioners delay the proceedings before the trial court, then petitioners will not have the benefit of exemption from personal appearance extended by this Court”.

On 08.08.2018, the counsel for second respondent (complainant) had submitted that, inspite of due knowledge of the summoning order, the petitioners have failed to enter appearance before the trial court. Mr. Vishwendra Verma, Advocate submitted that the said grievance raised was “incorrect” but at the same time undertook that “the petitioners will hereafter scrupulously and meticulously appear without any default before the trial

court”.

Note having been taken of the above submissions of both sides by order dated 08.08.2018, each party was called upon to submit copy of the proceedings recorded by the trial court to demonstrate and ensure that submissions were correct and the undertaking given were duly complied with. Neither side has come up with any such material but it is pointed out that the trial court record has been received and, for such purposes, may be looked into.

The perusal of the trial court record would show that the criminal complaint initially registered as CC No. 3321/2011 was presented before Additional Chief Metropolitan Magistrate, Dwarka and was allocated to Ms. Manisha Tripathi, Metropolitan Magistrate, Dwarka for 25.06.2011. It is the said court which passed the summoning order dated 19.09.2011. But, on account of the ruling of the Supreme Court reported as *Dashrath Rupsingh Rathod vs. State of Maharashtra and anr (2014) 9 SCC 129*, the complaint case was returned by the said court at Dwarka Court Complex on 02.12.2014 for being presented again to appropriate jurisdictional magistrate. The record would further show that the complaint was presented before the Chief Metropolitan Magistrate on 12.12.2014 and was allocated to Mr. Puneet Pahwa for 15.12.2014. It has, thus, been registered as CC no. 2519/1.

The record would also show that the Metropolitan Magistrate at New Delhi held a fresh preliminary inquiry and, on that basis, passed a fresh summoning order on 23.03.2015. The said fresh summoning order on 23.03.2015 was recorded by Mr. Puneet Pahwa, Metropolitan Magistrate at New Delhi courts, Patiala House Courts Complex. In terms of the said

order, the petitioners were summoned to appear as accused on 05.08.2015. The file of the trial court as placed before this Court contains the last order sheet of 20.12.2017. It is clear that the petitioners have failed to appear till the said date before the concerned court, the date next thereby fixed being 15.09.2018.

The pleadings in the present petition clearly show that the petitioners have been fully aware of the pendency of the criminal case before the Metropolitan Magistrate at New Delhi courts complex at Patiala House courts complex. From this, it has to be inferred that the petitioners are fully aware that a fresh summoning order was passed on 23.03.2015. If so, it is highly questionable as to why such facts were withheld and concealed from the present petition. It is further questionable as to why the petitioners would opt to challenge the summoning order dated 19.09.2011 which has since been followed by a fresh summoning order dated 23.03.2015. It is further questionable as to why wrong impression was created about the result of previous challenge by CrI.M.C. 1304/2014, the pleadings apparently being intentionally designed to mislead. It is a further a question that calls for scrutiny as to why the petitioners should have stayed away from entering appearance before the Metropolitan Magistrate despite full knowledge about the pendency of such proceedings there, particularly when they had had the benefit of some protection in terms of the order dated 14.03.2014 in CrI.M.C. 1304/2014.

The answers to the above will have to be given by Mr. Vishwendra Verma, Advocate who has presented the present petition and has been appearing on behalf of the petitioners. Since he is now statedly too pre-occupied elsewhere to give assistance here, the matter is adjourned.

The second petitioner Gaurav Singh Rathore is also directed to remain present in person.

Be listed on 18th March, 2019.

It is made clear that there shall be no further adjournment.

R.K.GAUBA, J

FEBRUARY 12, 2019

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