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

+ CRL.M.C. 3764/2016 and Crl.M.A. 15748-15749/2016

JOY HOTELS & RESORTS PVT LTD & ORS. Petitioners

Through: Mr. Shailesh Pandey, Mr. Khurram
Salim and Mr. Deepanshu Chothani, Advocates

versus

STATE & ANR. Respondents

Through: Mr. Kewal Singh Ahuja, APP for State
Mr. Diwan Singh Chauhan, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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09.01.2019

The petitioners have been summoned as accused for offences under Section 138 of the Negotiable Instruments Act, 1881 by the Metropolitan Magistrate, by his order dated 05.02.2016, passed on the basis of pre-summoning inquiry in the context of criminal complaint (no.5214/2015) of the second respondent, the gravamen of the said offence being that the petitioners had failed to make the payment inspite of notice of demand sent after dishonour of three cheques which had been issued by the petitioner in his favour.

The petitioners challenged the summoning order in the court of the Sessions invoking its revisional jurisdiction (by Crl. Revision No.48/2016) raising contentions that in absence of Memorandum of

Understanding (MOU) and disbursal of the loan amount, the cheques could not be presented. The contentions raised by the petitioners have been repelled by the revisional court and the revision petition was dismissed by order dated 18.07.2016.

The present petition was filed invoking the inherent power and jurisdiction of this court under Section 482 Cr. PC to reiterate the said very defences.

Against the above backdrop, question arose as to whether the petitioner having availed of the remedy of revision should be allowed to have recourse to the petition at hand as a substitute for virtually a second revisional challenge or scrutiny which is clearly barred under Section 397 (3) Cr.P.C.

This Court in an almost similar fact-situation, taking note of the decisions of the Supreme Court reported as *Krishnan Vs. Krishnaveni*, (1997) 4 SCC 241; *Rajinder Prasad Vs. Bashir*, (2001) 8 SCC 522 and *Kailash Verma vs. Punjab State Civil Supplies Corporation & Anr.*, (2005) 2 SCC 571 and following similar view taken by a learned single Judge of this Court in *Surender Kumar Jain vs. State & Anr.*, ILR (2012) 3 Del 99 in absence of a special case being made has earlier declined to interfere by the ruling (dated 03.07.2018) in Crl.M.C. 164/2018 *Ajay Maini vs. The State Govt. of NCT of Delhi & Ors.* in exercise of extraordinary jurisdiction under Section 482 Cr.P.C.

There are no special circumstances made out in the case at hand for the revisional court's view to be disturbed.

Even otherwise, the petition raises question of fact which cannot be properly or effectively addressed in the extraordinary jurisdiction under Section 482 Cr. PC (*Rajiv Thapar and Ors. Vs. Madan Lal Kapoor, (2013) 3 SCC 330*). Reserving the right of the petitioners to raise the defences on the lines set out in the petition, the petition is dismissed.

R.K.GAUBA, J

JANUARY 09, 2019

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