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

+ **CRL.M.C. 4092/2016 & CrI.M.A. 17086/2016**

ANIL GUPTA

..... Petitioner

Through: **Mr. Maheswar Dash, Advocate**

versus

S K K AGRO PVT LTD

..... Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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11.02.2019

On the criminal complaint (CC no. 760/1/2016) of the respondent, the petitioner, along with others, stood summoned as accused, by order dated 28.07.2016, of the Metropolitan Magistrate on the charge for offence under Section 138, Negotiable Instruments Act, 1881 (NI Act) the gravamen of the accusations being founded on allegations of no payment having been made pursuant to notice of demand issued in the wake of dishonour of three cheques bearing no. 635736 dated 26.02.2016; 635737 dated 29.02.2016 and 635738 dated 03.03.2016 each of Rs. 1 crore, the cheques concededly having been issued against the account of company M/s Amira Pure Foods Pvt. Ltd. which was shown in the array as company accused, the case against the petitioner being primarily on the basis of averments that he was director in the said company accused responsible for its day to day affairs and business during the relevant period.

The petitioner has approached this Court invoking the inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) primarily on the ground that he could not have been summoned as accused or be made accountable under Section 141, NI Act in respect of the above-mentioned three cheques for the reason he had resigned from the position of director of the company accused on 21.01.2016. He places reliance on copy of form no. DIR-11 affirming this fact, copy thereof having been filed with the petition.

Notice of petition was issued to the respondent complainant, by order dated 03.11.2016, with interim protection granted to the petitioner. The respondent stood served on 01.03.2017 and entered appearance through counsel on 12.07.2017. In spite of being called upon to do so, no reply has been filed by the respondent till date.

When the matter is taken up today, there is no appearance on behalf of the respondent. In these circumstances, it has to be inferred that the respondent does not contest the petition insofar as it is based on the contention of the petitioner that he had resigned from the position of the company accused on 21.01.2016. That fact having been impliedly admitted, there is no justification whatsoever for the prosecution against the petitioner in the afore-mentioned case to be allowed to continue. Since he had resigned from the position of the director of the company accused even prior to the issuance of the cheques in question, much before the notice of demand had to be issued, non-compliance therewith being the cause of action for criminal prosecution, continuation of the criminal case against the petitioner would be an abuse of the process of law.

Thus, the petition is allowed. The proceedings against the petitioner in the afore-mentioned criminal case of the respondent involving offence under Section 138 NI Act are hereby quashed.

This disposes of the petition and the application filed therewith.

R.K.GAUBA, J.

FEBRUARY 11, 2019

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