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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 16th January, 2019

+ CRL.M.C. 4123/2016 and Crl. M.A. 17183/2016

SMT TARUN SAMDARSHI

..... Petitioner

Through: Mr. Som Dutt Kaushik, Advocate

versus

STATE (NCT OF DELHI) & ANR

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for
State

Mr. M.K. Mishra, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner has been summoned as accused in criminal complaint case (CC 6383/2016) instituted by the second respondent (complainant) alleging offence punishable under Section 138 of the Negotiable Instruments Act, 1881 having been committed on account of no payment of amount due inspite of the notice of demand issued and served in the wake of dishonour of cheque bearing no.426715 dated 13.05.2016, for a sum of Rs.12 Lakhs, which had been issued by the petitioner (accused). The petitioner assails the summoning order passed by the Additional Chief Metropolitan Magistrate on 17.09.2016, on the basis of preliminary evidence invoking the

inherent power and jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC) primarily on the ground that the debt of Rs.12 Lakh which was purportedly to be repaid by the cheque in question was extended in June 2012 and therefore, it has become time barred and thus the cheque represented an amount which was legally not recoverable and consequently not due. It is also orally submitted that the cheque was not issued to the complainant but instead had been handed over to someone else.

2. Having heard the learned counsel for the petitioner, this court is of the view that the petition at best raises questions of fact which cannot be answered or addressed effectively without a proper inquiry or trial and, therefore, cannot be permitted to be raised in the jurisdiction under Section 482 Cr. PC. [see *Rajiv Thapar and Ors. Vs. Madan Lal Kapoor*, (2013) 3 SCC 330]. The counsel for the petitioner, however, persisted that this court renders a decision on the above mentioned contentions.

3. This court is of the view that filing of the petition itself is an abuse of the process of law. The issuance of cheque gives rise to a presumption of the amount being due and consequently an acknowledgment rendering the plea of debt being time barred inconsequential. It will be for the petitioner to show at the trial that the amount was not due or that the cheque had not been issued to the complainant. The reliance placed on *Exports India and Anr. Vs. State and Anr.*, 2006 SCC Online Del 1155, a decision rendered by a

learned single judge of this court, is misplaced as the facts are wholly distinguishable.

4. The petition and the application filed therewith are dismissed with costs of Rs.25,000/-.

R.K.GAUBA, J.

JANUARY 16, 2019

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