

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

Date of Order: January 09, 2019

+ **CRL.M.C. 3986/2017, CRL.M.A. 16082/2017**
+ **CRL.M.C. 4146/2017, CRL.M.A. 16657/2017**
+ **CRL.M.C. 4151/2017, CRL.M.A. 16674/2017**
+ **CRL.M.C. 5243/2017**

MIC ELECTRONICS LTD & ORS

.....Petitioners

Through: Mr. Vikas Gupta and Mr. Vipin
Kalra, Advocates

versus

STATE & ANR

.....Respondents

Through: Mr. M.S. Oberoi, Additional
Public Prosecutor for State
Mr. Sarul Jain, Advocate for
Respondent No. 2 in CRL.M.C.
4146/2017 & in CRL.M.C.
5243/2017
Mr. Satinder Singh Mathur,
Advocate for Respondent No. 2 in
CRL.M.C. 3986/2017 and
CRL.M.C. 4151/2017

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

Amended memo of parties of 9th January, 2019 has been filed in
Crl.M.C. 4146/2017 in the Court and is taken on record.

With the consent of learned counsel for the parties, the above captioned four petitions have been heard together and are being disposed of by this common order.

In the above-captioned four petitions, quashing of complaints under Section 138 of *the Negotiable Instruments Act, 1881* (hereinafter referred to as '*the NI Act*') and the summoning order of 24th September, 2015 is sought on the ground that the trial court is required to conduct an inquiry or investigation before issuing the summons in view of mandate of Section 202 of Cr.P.C.

Learned counsel for petitioners places reliance upon Supreme Court's decision in *Abhijit Pawar Vs. Hemant Madhukar Nimbalkar & Anr.* (2017) 3 SCC 528 to submit that inquiry qua petitioner who is located beyond the jurisdiction of Delhi Courts is required to be conducted by trial court but it has not been done. So, it is submitted that the trial court has erred in not conducting inquiry as per the mandate of Section 202 of Cr.P.C. Reliance is also placed upon Supreme Court's decision in *K.S. Joseph Vs. Philips Carbon Black Ltd*, (2016) 11 SCC 105 in support of above submissions.

On the other hand, respondents' counsel has relied upon Supreme Court's decision in *Shivjee Singh Vs. Nagendra Tiwary & Ors.* 2010 (7) SCC 578 to submit that at the summoning stage, a limited scrutiny is required. Reliance is also placed upon Supreme Court's decision in *Indian Bank Association and Others Vs. Union of India & Others*, (2014) 5 SCC 590 to submit that proceedings under Section 138 of *the NI Act* are

summary one and such complaints are required to be decided in light of the directions issued by a Co-ordinate Bench of this Court in *Rajesh Agarwal Vs. State* 2010 SCC OnLine Del 2511. So, it is submitted that these petitions deserve dismissal.

Upon hearing and on perusal of impugned order, material on record and the decisions cited, I find that Supreme Court in *Abhijit Pawar (supra)* has reiterated that if a party who resides outside the territorial jurisdiction is to be summoned, then an inquiry is required to be undertaken by court to protect innocent persons from being harassed by unscrupulous persons. The purport of the inquiry under Section 202 of Cr.P.C., in cases where party to be summoned resides outside the territorial jurisdiction, is to avoid unnecessary harassment. Supreme Court in *K.S. Joseph (supra)* regarding the mandatory nature of Section 202 of Cr.P.C. has left the question of law open. Supreme Court in *Indian Banks Association and Others (supra)* has reiterated that procedure/guideline as laid down by this Court in *Rajesh Agarwal (supra)* is required to be followed for speedy disposal of cases under Section 138 of the NI Act.

While keeping in mind the afore-referred mandate and the fact that petitioners suffer no prejudice on account of non-holding of inquiry prior to issuance of summons, I deem it appropriate to direct the trial court to expeditiously proceed with this case in light of the guidelines laid by this Court in *Rajesh Agarwal (supra)*. Such a course is adopted because case of the parties is based on an agreement to sale, loan agreement, etc. In such a case, it cannot be said that the initiation of the proceedings under

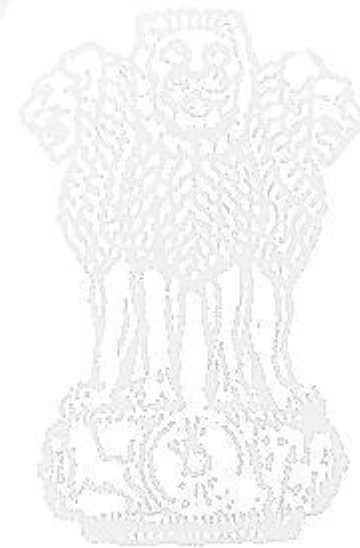
Section 138 of *the NI Act* and summoning of petitioners has caused harassment to petitioners or that the complaints filed against petitioners are false and baseless. Plea of lack of territorial jurisdiction is not forthcoming.

In view of aforesaid, these petitions and applications are accordingly dismissed while refraining to comment upon merits of this case, lest it may prejudice either side before the trial court.

(SUNIL GAUR)
JUDGE

JANUARY 09, 2019

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