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

+ **CRL.M.C. 5072/2023, CRL.M.A. 19247/2023**

SH. A.N. REDDY

..... Petitioner

Through: **Mr.Ashish Chauhan and Ms.Sonal Chauhan, Advts.**

versus

STATE OF NCT OF DELHI & ANR.

..... Respondent

Through: **Mr.Digam Singh Dagar, APP for the State.**

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Date of Decision: 31.07.2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CRL.M.A. 19248/2023 (for exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

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1. The Present petition has been filed under section 482 CR.P,C for quashing of the summoning order dated 04.07.2018 under section 138 (N.I) Act passed by the Special Court (N.I.Act), South West District,

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Dwarka. in complaint case no.8319 of 2018 titled '*M/s Power2SME Private Limited vs. A.N.Reddy*'.

2. Learned counsel for the petitioner submits that the learned trial court has wrongly framed the notice against the petitioner. Learned counsel submits that the cheque was issued by the petitioner on behalf of the partnership concern namely M/s Ratna Engineering Works. Learned counsel for the petitioner submits that as per the partnership deed which is placed on record, the petitioner was not even responsible for the day-to-day affair of the firm. Learned counsel further submits that the complainant even did not implead the partnership firm and therefore the notice issued under Section 251 Cr.P.C. is illegal and liable to be set aside.
3. The complaint case under Section 138 N.I.Act was filed as the cheque issued by the petitioner as an authorized signatory of M/s Ratna Engineering Works was returned unpaid with the remarks 'funds insufficient'. The complainant within a period of 30 days sent a notice dated 18.01.2018 through the petitioner and the same was duly replied. However, since the payment was not made, the present complaint was filed.
4. The power under Section 482 Cr.P.C. though plenary in nature but has to be exercised with due care and caution. The pre-requisite for exercising the discretion is to prevent the abuse of the process of the court or miscarriage of justice. In the present case, on the face of it the cheque was signed by the petitioner for M/s Ratna Engineering Works.



It does not indicate that M/s Ratna Engineering Works is a sole proprietorship firm. Therefore, there was no reason for the complainant to know that it is a partnership firm. Similarly, the notice dated 18.01.2018 was duly sent to the petitioner and the same was replied by the Koncept Law Associates legal firm on behalf of the petitioner. The plea of the learned counsel for the petitioner that this reply was not sent on behalf of the petitioner and rather a reply was sent by another partner on the face of it does not seem plausible. This plea of the learned counsel for the petitioner is absolutely false on the face of it as the reply itself says that the advocates had sent the reply under the instructions of the petitioner. There was no reason for the complainant to know that M/s Ratna Engineering Works is a partnership firm or a sole proprietorship firm. The petitioner cannot come for quashing of the complaint on this ground. This is a matter which can be adjudicated on the basis of the evidence to be led by the parties.

5. There is no doubt that the revisional jurisdiction is a concurrent jurisdiction but it is also a settled proposition that if the jurisdiction lies with the learned Sessions Court, the propriety demands that the petitioner should file a revision petition first before the learned Sessions Court. Reliance has been placed upon ***Shushil Kumar Singh v. State of UP and another***, 2023 SCC Online ALL 105 the Hon'ble Supreme Court inter-alia held that:

15. Section 482 of the Code envisages the three circumstances under which the inherent jurisdiction may be exercised by High Court, namely, (i) to give effect to an order under the Code; (ii) to



prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice. It is trite law that the inherent power of the High Court under Section 482 of the Code ought to be exercised to prevent miscarriage of justice or to prevent the abuse of the process of the court or to otherwise secure the ends of justice and the Court possesses wide discretionary powers. It is well settled that the inherent powers under section 482 Cr. P.C. can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by any particular statute. If an effective statutory alternative remedy is available, this court should refrain from exercising its extraordinary power under section 482 Cr. P.C., especially when the applicant has not availed of that remedy.

16. The Apex Court in the case of Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: AIR 1978 SC 47, has held that the following principles would govern the exercise of inherent jurisdiction of the HC:

- 1. Power is not to be resorted to, if there is specific provision in code for redress of grievances of aggrieved party.*
- 2. It should be exercised sparingly to prevent abuse of process of any Court or otherwise to secure ends of justice.*
- 3. It should not be exercised against the express bar of the law engrafted in any other provision of the code.*

6. Thus, the petitioner should have first invoked the revisional jurisdiction of the Court, which he did not choose to avail.
7. I consider that there is no substance in the present petition. There is no ground to invoke the power under Section 482 Cr.P.C.
8. Hence, the petition along with the pending application is dismissed.



DINESH KUMAR SHARMA, J

JULY 31, 2023
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