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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 8419/2024 & CRL.M.A. 32152/2024**
SAPNA SHARMAPetitioner

Through: Mr. Deepal Goel, Advocate.

versus

THE STATE NCT OF DELHI AND ANRRespondent

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

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **02.12.2024**

1. This application has been filed seeking to quash Complaint Case No.57571/2016 filed under Section 138 of the Negotiable Instruments Act. The matter is at the stage of recording of evidence. Legal Notice under Section 138 of the Negotiable Instruments Act was issued on 19th April 2016.
2. Complaint was served on 22nd April 2016, and the accused has filed an application after eight years stating that the complaint was filed on the 14th day of receipt of the legal notice. Therefore, the 15-day statutory requirement period has not elapsed, and the complaint has been made prematurely without lapse of the mandatory period.
3. The impugned order has rightly dismissed the said application which has been made after eight years of the cognizance having been taken, despite being aware of the said fact. The accused was summoned and the notice was framed against the accused on 28th July 2017. The complainant was cross-examined on behalf of the accused on 24th December 2018.
4. Considering that the trial has already proceeded ahead, this Court finds no reason to exercise inherent powers to displace the trial which ought



to achieve its culmination. All arguments by petitioner can, in any event, be taken at the stage of final arguments.

5. Counsel for the petitioner has drawn attention to the Supreme Court's decision on *State Of Punjab v. Davinder Pal Singh Bhullar & Ors.* (2011) 14 SCC 770, wherein it was stated by the Supreme Court that if the initial action is not in consonance with the law, all subsequent and consequent petitions will fall through the reason that illegality structures in the root of the order. Relevant paragraph is extracted as under:

“107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim sublato fundamento cadit opus meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.”

6. However, considering that the issue, if at all merited, has been pressed by the accused after eight years, despite being aware of the dates in question, in the opinion of this Court is *mala fide* and is an attempt to subvert the trial, at the cost of the complainant who has been pursuing these proceedings under Section 138 of Negotiable Instruments Act since 2016. Needless to state, all arguments shall be available to the accused at the stage of final arguments, post recording of evidence.

7. Accordingly, the petition is dismissed.

8. Order be uploaded on the website of this Court.

ANISH DAYAL, J

DECEMBER 2, 2024/ak/tk