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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 2719/2024
SUGANDHIM FOOD AND CATERING
PVT. LTD AND ORS. Petitioners
Through: Mr. Pranesh, Adv.

versus

B.K. JHA PROPRIETOR OF
KRISHNA ENTERPRISES Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
04.04.2024

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CRL.M.A. 10348/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 2719/2024 & CRL.M.A. 10347/2024 (for interim stay)

3. The present petition is filed challenging the order dated 16.02.2024 (hereafter '**the impugned order**'), passed by the learned Metropolitan Magistrate ('**MM**'), NI Act-07, South District, Saket Courts, New Delhi, in Complaint Case No. 439/2017 titled as *B.K. Jha v. Sugandhim Food and Catering Pvt. Ltd. and Ors.*
4. The learned MM, by the impugned order, had dismissed the application filed by the petitioners under Section 395(2) of the Code of Criminal Procedure, 1973 ('**CrPC**').
5. The petitioner had sought reference to the High Court on the ground that the learned Trial Court, by judgment dated 24.08.2023, had held the petitioners guilty for the offence under Section 138 of the Negotiable Instrument Act, 1881 ('**NI Act**')



by using the term-‘accused’.

6. The learned counsel for the petitioners submits that the complaint was filed against the petitioners. The cheque was issued by Petitioner No. 1 and Petitioner Nos. 2 and 3 were sought to be made vicariously liable on account of them being the Directors of Petitioner No.1 company.

7. He submits that the learned MM could not have held all the petitioners guilty by using the term ‘accused’.

8. He submits that the provisions of CrPC do not permit all the accused persons to be held guilty in such a manner and the order has to indicate that every accused has been held guilty.

9. He further submits that the learned MM dismissed the application filed by the petitioner under Section 395(2) of the CrPC stating that the Court is not empowered to review its own order in view of the bar under Section 362 of the CrPC.

10. Issue notice.

11. Notice be served through all permissible modes.

12. The petitioner is also permitted to serve the respondent through the learned counsel who represents the respondent before the learned Trial Court.

13. Subject to the petitioner depositing the entire cheque amount with the Registrar General of this Court within a period of three weeks from today, the proceedings before the learned Trial Court are stayed till the next date of hearing.

14. The Registry is directed to keep the amount in an interest bearing account.

15. List on 22.05.2024.

AMIT MAHAJAN, J

APRIL 4, 2024/“SS”