

\$~46

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

Judgment delivered on: 27th November, 2015

+ **CRL.M.C. No.4791/2015**

JP SINGH

..... Petitioner

Represented by: Mr. Gurmeet Singh, Advocate with
Petitioner in person.

Versus

SUKHBIR SINGH

.....Respondent

Represented by: None.

**CORAM:
HON'BLE MR. JUSTICE SURESH KAIT**

SURESH KAIT, J. (Oral)

Crl. M.A.No.17274/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. No.4791/2015

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), petitioner has assailed the order dated 01.09.2015, whereby after framing notice under Section 251 Cr.P.C., the learned Trial Court adjourned the matter for filing an application under Section 145(2) of the Negotiable Instruments Act, 1881 ('NI Act') and the complainant's evidence.

2. The present petition is filed on the ground that on 01.09.2015, the matter was listed for framing of notice under Section 251 Cr.P.C. upon

the respondent and on the said date, notice was framed. The respondent did not seek any permission to file application under Section 145 (2) NI Act, however, the learned Trial Court passed the order noted above.

3. Learned counsel appearing on behalf of the petitioner submits that the said order is over stepping and contrary to the judgment of this Court in case of ***Rajesh Agarwal Vs. State & Anr. 171 (2010) DLT 51***, wherein it was observed as under:-

“17. The summary trial procedure to be followed for offences under Section 138 N.I. Act would thus be as under:

Step I: On the day complaint is presented, if the complaint is accompanied by affidavit of complainant, the concerned MM shall scrutinize the complaint & documents and if commission of offence is made out, take cognizance & direct issuance of summons of accused, against whom case is made out.

Step II: If the accused appears, the MM shall ask him to furnish bail bond to ensure his appearance during trial and ask him to take notice under Section 251 Cr.P.C. and enter his plea of defence and fix the case for defence evidence, unless an application is made by an accused under Section 145(2) of N.I. Act for recalling a witness for cross examination on plea of defence.

Step III: If there is an application under Section 145(2) of N.I. Act for recalling a witness of complainant, the court shall decide the same, otherwise, it shall proceed to take defence evidence on record and allow cross examination of defence witnesses by complainant.

Step IV: To hear arguments of both sides.

Step V: To pass order/judgment.”

4. Keeping in view the facts and circumstances of the case and the

fact that the respondent did not file any application under Section 145 (2) NI Act, the order dated 01.09.2015 is set aside to the extent qua granting liberty to the petitioner to file the application under Section 145 (2) NI Act.

5. The learned Trial Court shall be at liberty to take steps as per the procedure prescribed by this Court in paragraph 17 of ***Rajesh Aggarwal's*** case (*supra*).

6. In view of the above, the present petition is disposed of.

7. A copy of this order be given *dasti* to the learned counsel for the parties.

**SURESH KAIT
(JUDGE)**

NOVEMBER, 27 2015
Sb/jg