

\$~25

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

+ CRL.M.C. 6151/2018 & CrI.M.A. 48830-32/2018

ASHOK KUMAR SAVJIBHAI KALASARIYA Petitioner

Through: Mr. Parvinder Chauhan, Adv.

versus

STATE & ANR.

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

%

05.12.2018

On the criminal complaint (CC No. 5006342/2016) of the second respondent, the petitioner was summoned by order passed on 15.03.2017, by the Metropolitan Magistrate calling him upon to appear as accused and answer the accusations for offence under Section 138, Negotiable Instruments Act, 1881 (NI Act). The petitioner had due notice and entered appearance through his nephew on 07.06.2017 referring to some arbitral proceedings. Thereafter, he stopped appearing and this led to duress process being issued by order dated 25.10.2017. He would not appear in person even though the matter was adjourned from time to time. He engaged a counsel, who appeared before the Magistrate on 16.05.2018 to seek exemption, which application was not allowed, the Magistrate being not satisfied with the reasons. The Magistrate thereafter issued non-bailable warrant, returnable for 26.09.2018. On 26.09.2018, another advocate

appeared and moved yet another application seeking “permanent exemption”. The Magistrate referred to earlier conduct and declined to entertain the said request noting, *inter alia*, that the petitioner had not appeared even once.

The present petition has been filed assailing the order dated 26.09.2018. There is no error or infirmity in the said order. Having been summoned to appear as accused it is the bounden duty of the petitioner to appear in person. He cannot evade the process by referring to proceedings under the civil jurisdiction. The submission that the petitioner is facing some health issues is not supported by any medical record. The proper course for the petitioner would be to appear before the Magistrate and explain the earlier default by presenting the supportive documents relating to his medical condition, if any, to seek cancellation of the process and also furnish bail bonds inasmuch as the offence on the accusations of which he stands summoned is bailable. His request for exemption through counsel can be entertained by criminal court only after he has entered appearance and his presence is regulated by a bail order.

The petition and the applications filed therewith are dismissed.

R.K.GAUBA, J

DECEMBER 05, 2018

nk