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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 560/2019 & CRL.M.A. 38249/2019**

M/S V.N.G ENTERPRISES

..... Petitioner

Through: Mr Indu Shekhar, Advocate.

versus

STATE & ANR

..... Respondents

Through: Mr Amit Gupta, APP for State.

AND

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CRL.L.P. 563/2019 & CRL.M.A. 38311/2019

M/S V.N.G ENTERPRISES

..... Petitioner

Through: Mr Indu Shekhar, Advocate.

versus

STATE & ANR

..... Respondents

Through: Mr Amit Gupta, APP for State.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.10.2019

1. The petitioner has filed the present petitions, *inter alia*, impugning an order dated 24.07.2019 passed by the learned Metropolitan Magistrate, South District, Saket Courts, whereby the petitioner's complaint under Section 138 of the Negotiable Instruments Act, 1881 was dismissed for non-prosecution. It is seen from the record that non-bailable warrants (NBWs)

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were issued against respondent no.2 (Mr Charanjit Kochhar). Proceedings under Section 82 of the CrPC were also initiated against him. The learned counsel appearing for the petitioner submits that the said proceedings were cancelled at the instance of the grandson of Mr Charanjit Kochhar. It is stated that the ground on which the same was cancelled was that Mr Charanjit Kochhar had expired two decades earlier.

2. Although, Mr Charanjit Kochhar has been arrayed as respondent no.2 in the present petition; clearly, he cannot be so arrayed since the record reflects that he had expired. Although his death certificate was not produced in the court; nonetheless, since the court has cancelled the aforesaid NBWs and also the proceedings under Section 82 of the CrPC on the said basis, it must be accepted – unless contested by the petitioner – that respondent no.2 had expired two decades ago.

3. The learned counsel appearing for the petitioner states that although respondent no.2 may have expired several years ago, nonetheless, the cheque in question had been issued from his bank account only two years ago. It is also the petitioner's case that the said cheque was not received from respondent no.2 but from another person. In view of the aforesaid facts, setting aside the impugned order (whereby the petitioner's complaint was dismissed for non-prosecution) would serve little purpose. Indisputably, a deceased person cannot be proceeded against under Section 138 of the Negotiable Instrument Act, 1881.

4. In view of the above, this Court finds no reason to entertain the present appeal. It is, however, clarified that it will be open for the petitioner to institute appropriate proceedings against the person from whom he had

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received the cheque in question.

5. The petitions are dismissed with the aforesaid observations. The pending applications are also disposed of.



VIBHU BAKHRU, J

OCTOBER 16, 2019
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