

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



+ **CRL.M.C. 3270/2021**

Date of Decision : 15.12.2021

IN THE MATTER OF:

RAJEEV KUMAR

..... Petitioner

Through: Mr. Sanjeev Kumar, Advocate

Versus

SURENDER KUMAR BANSAL

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CRL.M.A. 20101/2021 (Exemption)

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

CRL.M.C. 3270/2021

1. The present petition has been filed under Article 227 of the Constitution of India read with Section 482 Cr.P.C. on behalf of the petitioner assailing the order dated 16.11.2021 passed by the learned Addl. Sessions Judge-02, Patiala House Courts, New Delhi in CR No. 13/2020 arising out of CC No. 1952/2017 filed under Sections 138/141 NI Act, whereby process under Section 82 Cr.P.C. has been issued against the petitioner.

2. Learned counsel for the petitioner submits that vide judgment dated 10.01.2020, the petitioner was convicted by the Trial Court for the offence

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punishable under Section 138 NI Act and the same was assailed before Sessions Court by way of an appeal, however, due to the petitioner's non-appearance, proceedings under Section 82 Cr.P.C. have been initiated against him.

3. Learned counsel for the petitioner further submits that the aforesaid appeal is still pending before the Sessions Court and the petitioner has made an offer of settlement to the complainant for Rs.5,65,000/-, which has been accepted. He also submits that out of the aforesaid amount, only Rs.1,45,000/- remains to be paid and the petitioner is ready and willing to pay the aforesaid remaining amount of Rs.1,45,000/- to the respondent. It is prayed that in view of the facts and circumstances, the impugned order dated 16.11.2021 may be set aside. Learned counsel, on instructions, further undertakes that the petitioner will appear before the Sessions Court on the next date of hearing and thereafter.

4. It is noted that the aforesaid Complaint Case came to be filed against the petitioner under Sections 138/141 NI Act on the allegation that in furtherance of a sale/purchase transaction of gold and jewellery, the petitioner had issued cheques in favor of the complainant, however, the same got dishonoured on the ground "*funds insufficient*" and the petitioner failed to discharge the liability after issuance of legal notice within the statutory period.

5. Vide judgment dated 10.01.2020, the petitioner was convicted for the offence punishable under Section 138 NI Act and vide order on sentence dated 15.01.2020, he was sentenced to undergo Simple Imprisonment for a period of two years, alongwith payment of double the cheque amount as compensation to the complainant. An amount of Rs.85,000/- was directed to be deducted from the said amount, as it had been paid by him to the complainant during the proceedings. In default of the payment of the



compensation, the petitioner was directed to further undergo Sim,

Imprisonment for a period of three months. On an application moved under Section 389(3) Cr.P.C., the petitioner's sentence was suspended till filing of the appeal.

6. Aggrieved by the judgment on conviction dated 10.01.2020 and the order on sentence, the petitioner assailed the same before the Sessions Court. In course of the proceedings, the matter was settled between the parties for a sum of Rs.5,65,000/-. It has been claimed that out of the settled amount, an amount of Rs.1,45,000/- remains to be paid as on date.

7. The petitioner's case is that he had fallen ill on 26.10.2021, for which reason he could not appear before the concerned Court and NBWs came to be issued against him. The matter was listed for 16.11.2021, on which date, he reportedly reached the Court with a sum of Rs.90,000/- to be handed over to the complainant, however, by the time he appeared before the Court, process under Section 82 Cr.P.C. had been issued against him.

8. It is a well-established position of law that the purpose of issuing process under Section 82 Cr.P.C. is to secure presence of the accused before the Court. In this regard, a Co-ordinate Bench of this Court in D.N. Sood & Anr v. Inspecting Asstt. Commissioner of Income Tax reported as **2003 SCC OnLine Del 409**, while setting aside the order issuing process against the accused under Sections 82 and 83 Cr.P.C., held:-

"3. Since the purpose of proceedings under Sections 82 and 83, Cr.P.C. is simply to secure the presence of the petitioners before the Court, in view of their undertaking to attend the learned Trial Court in person, the Order issuing process under Sections 82 and 83, Cr.P.C. is liable to be set aside..."

9. Recently, this Court in Poonam Devi and Others v. State of Nct of Delhi reported as **2021 SCC OnLine Del 5164**, also reiterated that the purpose of initiation of proceedings under Section 82 Cr.P.C. is to secure the presence of the accused before the Court.



10. In view of the submissions made and the exposition of law outlined hereinabove, the order dated 16.11.2021, whereby process under Section 82 Cr.P.C. was issued against the petitioner, is set aside.

11. The undertaking given on behalf of the petitioner is taken on record and he is made bound by the same. The petitioner shall also file an undertaking in the form of an affidavit before the concerned Court stating that he will regularly appear before the Court.

12. With the above directions, the petition is disposed of.

13. A copy of this order be communicated to the concerned Court forthwith.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 15, 2021

Click here to check corrigendum, if any