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

+ CRL.L.P. 52/2023 & CRL.M.A. 2519/2023, CRL.M.A. 2520/2023

SURESH KUMAR JAIN (DECEASED) THR. SUBSTITUTED

DALIP KUMAR JAIN .....Petitioner

Through: Mr. Anuj Kumar Garg, Mr. Vijay  
Kumar and Ms. Jyoti, Advocates.

versus

SH GAUTAM JAIN .....Respondent

Through: Mr. Utkarsh Mathur, Mr. Vineet K.  
and Mr. Charu Bhardwaj, Advocates.

+ CRL.L.P. 59/2023 & CRL.M.A. 2887/2023, CRL.M.A. 2888/2023

SHRI SURESH KUMAR JAIN (NOW DECEASED) THRU

SUBSTITUTED DALIP KUMAR JAIN .....Petitioner

Through: Mr. Anuj Kumar Garg, Mr. Vijay  
Kumar and Ms. Jyoti, Advocates.

versus

GAUTAM JAIN .....Respondent

Through: Mr. Utkarsh Mathur, Mr. Vineet K.  
and Mr. Charu Bhardwaj, Advocates.

+ CRL.L.P. 60/2023 & CRL.M.A. 2890/2023, CRL.M.A. 2892/2023

SURESH KUMAR AND (NOW DECEASED) THRU

SUBSTITUTED DALIP KUMAR JAIN .....Petitioner

Through: Mr. Anuj Kumar Garg, Mr. Vijay  
Kumar and Ms. Jyoti, Advocates.

versus

SH. GAUTAM JAIN .....Respondent

Through: Mr. Utkarsh Mathur, Mr. Vineet K.  
and Mr. Charu Bhardwaj, Advocates.



**CORAM:**  
**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**ORDER**  
**08.10.2024**

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**CRL.L.P. 52/2023**  
**CRL.L.P. 59/2023**  
**CRL.L.P. 60/2023**

By way of the present leave petitions filed under section 378(4) of the Code of Criminal Procedure 1973, the petitioner seeks leave to impugn order dated 02.09.2022 made in Ct. Case No. 1318/2016, Ct. Case No. 16897/2016 and Ct. Case No. 18680/2016, whereby the learned Metropolitan Magistrate, Tis Hazari Courts, New Delhi has dismissed the complaints filed under section 138 of the Negotiable Instruments Act, 1881 ('NI Act') on the ground of the complainant's non-appearance and for non-prosecution of the matters.

2. Notice in CRL.L.P. No. 52/2023 was issued on 01.02.2023; and in CRL.L.P. No. 59/2023 and CRL.L.P. No. 60/2023 on 03.02.2023.
3. For the reasons stated in the leave petitions, and considering that the complaint cases have not been dealt with on merits, the leave petitions are allowed.
4. The petitioner is granted leave to appeal against orders dated 02.09.2022.
5. Leave petitions are disposed-of.

**CRL.A. (to be numbered)**

6. Let the criminal appeals be numbered.
7. Issue notice.



8. Learned counsel is present on behalf of the respondent and accepts notice.
9. Mr. Anuj Kumar Garg, learned counsel for the petitioner submits, that the appellant had filed 03 criminal complaints under section 138 of the NI Act in relation to several dishonored cheques aggregating to Rs.40,00,000/-; however, *vide* impugned order dated 02.09.2022, learned Magistrate has dismissed all 03 complaints on the ground of non-appearance of the appellant (complainant) and non-prosecution of the cases by him. The relevant extract of order dated 02.09.2022 reads as follows :

*“Court notice issued to the complainant received back unexecuted with the report “not found”.*

*Perusal of the record reveals that none is appearing on behalf of complainant since 01.10.2019. Today also none appeared on behalf of complainant.*

*No further opportunity is warranted in the present case.*

*Therefore, the present matter is hereby dismissed on the ground of non appearance as well as non prosecution.”*

10. Counsel submits, that the appellant is about 70 years of age and is suffering from various medical issues including Type-II Diabetes Mellitus, Hypertension and Coronary Artery Disease. Counsel has drawn attention *inter-alia* to Discharge Summary for Cardiology dated 07.01.2020 to show that the appellant was admitted to Action Medical Institute, Paschim Vihar, New Delhi from 04.01.2020 to 07.01.2020 and was put on ventilator support during that period.
11. Counsel further submits, that thereafter the petitioner contracted COVID-19 and was admitted to Maharaja Agrasen Hospital, West Punjabi Bagh, New Delhi from 17.05.2021 to 27.05.2021. Discharge



Summary dated 27.05.2021 in that regard is appended as Annexure A-5 to the appeal.

12. Counsel submits, that the appellant was unable to pursue the cases diligently since he had been suffering from various medical ailments, as can be seen from the record.
13. On the other hand, opposing grant of relief in these appeals, learned counsel for the respondent submits, that no one had been appearing on behalf of the complainant in these matters since 01.10.2019. Counsel submits however, that in a connected civil case filed by the complainant bearing Civ DJ No. 84/2019, which is pending before the learned Additional District Judge, Tis Hazari Court, Delhi, the appellant has been appearing regularly. Counsel draws attention to orders dated 05.04.2021 and 06.10.2022 made by the learned ADJ in Civ DJ No. 84/2019 which records the appellant's (plaintiff in those proceedings) presence.
14. Disputing the allegation that the petitioner had been appearing in the civil case while neglecting to prosecute the criminal complaints which are subject matter of the present proceedings, learned counsel for the petitioner submits, that there is no reason why the petitioner would have prosecuted a suit in which he was plaintiff but not the criminal complaints in which he was the complainant. Counsel accordingly submits, that this has happened only for the reason that unfortunately on the dates on which the criminal complaints were taken-up, the petitioner was suffering from various ailments as referred-to above.
15. Upon an overall conspectus of the facts of the case, especially considering that the appellant is about 70 years old; has evidently



suffered serious medical ailments from time-to-time during the relevant period; and that the criminal complaints which concern multiple cheques which aggregate to Rs. 40,00,000/- have not been adjudicated on merits, the appeals are allowed, *subject however* to the appellant paying costs of Rs.10,000/- *in each complaint* to the Very Special Arts India, Plot No. 3 Institutional Area, Nelson Mandela Marg, Vasant Kunj, New Delhi, within 06 weeks. The appellant is directed to place on record proof of payment of costs, within 02 week of payment.

16. The appeals are allowed and disposed-of in the above terms; and the criminal complaints are restored for further proceedings before the learned Magistrate, to be decided on merits.
17. The appellant is cautioned against any further negligence in pursuing the matters.
18. Pending applications, if any, also stand disposed-of.

**ANUP JAIRAM BHAMBHANI, J**

**OCTOBER 8, 2024**