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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 5497/2024, CRL.M.A. 20997/2024 &
CRL.M.A. 20998/2024

DR. NAHID AMIRI

.....Petitioner

Through: Mr. Shahid Ali, Mr. Shah
Rukh Khan, Mr. Sameer
Tayeeb, Mr. Salman &
Mr. Gopal Singh, Advs.

versus

STATE THROUGH PS CANNAUGHT
PLACE AND ANR

.....Respondents

Through: Ms. Kiran Bairwa, APP
for the State
SI Gajender Singh, PS-
Connaught Place
Mr. Yatharth Rohilla,
Adv. for R2 (through VC)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

22.07.2024

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1. The present petition is filed challenging the order dated 25.04.2024 passed by the learned Metropolitan Magistrate ('**Trial Court**') in Complaint Case No. 5436/2021 titled as *G.S. Khurana v. Derma Aesthetic World through Dr. Nahid Amiri* (hereafter '**the impugned order**').
2. The learned Trial Court, by the impugned order, has issued Non-Bailable Warrants ('**NBW**') against the petitioner on account of his non-appearance in the complaint case filed by Respondent No. 2 under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**').
3. The complaint was filed in regard to the dishonour of cheque for a sum of ₹1,50,000/-.

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4. It is the case of the petitioner that summons were never served on the petitioner and the alleged delivery of WhatsApp screenshot was taken as a valid service. He submits that even the bailable warrants were received unserved.

5. The learned Trial Court has accepted the copy of WhatsApp screenshots filed by the complainant along with Certificate under Section 65(b) of the Indian Evidence Act, 1872, as the service of summons on the petitioners.

6. On non-appearance of the petitioner on 03.01.2023, bailable warrants were issued.

7. The learned Trial Court, by order dated 17.10.2023, noted that bailable warrants were unserved as the petitioner was not present at the given address and the intimation was given to him telephonically. However, the learned Trial Court noted that the intimation through telephone is deemed to be in knowledge of the Court proceedings and then proceeded to issue non-bailable warrants.

8. The learned counsel for the petitioner submits that they had no intention to evade the procedure and trial in the complaint filed by the Respondent No. 2. He submits that the petitioner had no reason, not to appear, if the notice had been served. The learned counsel for the petitioner on instructions undertakes that the petitioner would appear before the learned Trial Court as and when the date is fixed and no unwarranted adjournments would be taken.

9. The service of summons by way of WhatsApp is an acceptable mode of service on the parties. It is not denied that the petitioner was telephonically informed about the pendency of the proceedings before the learned Trial Court. Thus, this Court does not find any infirmity in the order passed by the learned



Trial Court.

10. However since the petitioner is now present before this Court and has undertaken to appear before the learned Trial Court on the next date of hearing, I am of the opinion that, the interest of justice would suffice if one last opportunity is granted to the petitioner to appear before the learned Trial Court and the respondent is compensated for the delay.

11. In view of the above the petitioner is directed to appear before the learned Trial Court on the next date of hearing.

12. The petitioner is bound down to the aforesaid undertaking.

13. The petitioner is also directed to pay a cost of ₹10,000/- to the Respondent No. 2.

14. In view of the above, the impugned order dated 25.04.2024 is set aside and the NBW issued *vide* impugned order stands cancelled.

15. -All rights and contentions of the parties are reserved.

16. The petition is disposed of in the aforesaid terms.

AMIT MAHAJAN, J

JULY 22, 2024
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