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

+ **W.P.(CRL) 841/2023**

ATUL KANT

.....Petitioner

Through: **Mr. Raj Vardhan Upadhyay,**
Advocate.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: **Mr. Rahul Tyagi, ASC (Crl.) with Mr. Sangeet Sibou, Mr. Priyansh Raj Singh Senger and Mr. Aniket Kumar Singh, Advocates for State.**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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18.08.2025

1. Through the present writ petition filed under Article 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973¹ (corresponding to Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023²), the Petitioner assails the order dated 17th January, 2023, passed by the Metropolitan Magistrate (NI Act)-02, Rouse Avenue Court Complex, New Delhi in Ct. Cases No. 10246/2017 titled ***Atul Kant v. Jitender Saini @ Jatin Saini***, whereby the Court dismissed the complaint and acquitted the Accused (Respondent No. 2).

2. At the outset, counsel for the Petitioner acknowledges the fact that the impugned order is amenable to appeal under the procedure prescribed in

¹ "CrPC"

² "BNSS"



CrPC. Nonetheless, he submits that the Petitioner, acting on legal advice, instituted the present writ petition despite the availability of the alternative statutory remedy. Counsel further acknowledges that, in view of the judgment of the Supreme Court in ***Celestium Financial v. A. Gnanasekaran***,³ the Petitioner has an efficacious remedy of filing an appeal under the proviso to Section 372 of CrPC.

3. In the above circumstances, counsel for the Petitioner seeks leave to withdraw the present petition, while praying that the period spent by the Petitioner in *bona fide* pursuing the present writ petition under a mistaken impression of law, relying upon the decision of this Court in ***J.S. Engineering Works v. the State & Ors.***,⁴ be excluded for the purpose of limitation.

4. In light of the above, the following directions are issued:

4.1. Leave and liberty granted. The Appellant is permitted to file an appeal under the proviso to Section 372 of CrPC against the judgment of acquittal dated 17th January, 2023, in light of the decision of the Supreme Court in ***Celestium Financial*** (supra).

4.2. Having regard to the fact that the legal position has been elucidated by the Supreme Court only recently, it is directed that the period commencing from the date of initial filing of the present petition before the Registry of this Court until the expiry of two weeks from today shall stand excluded for the purpose of computing the period of delay, if any. The Appellant shall be at liberty to file an application for condonation of delay, if any, which shall be considered on its own merits and in accordance with law.

³ 2025

⁴ 2014 SCC OnLine Del 6897.



5. In view of the above, the present petition is disposed of along with any pending application(s).
6. It is made clear that the Court has not commented on the merits of the case. All rights and contentions of the parties are left open.

SANJEEV NARULA, J

AUGUST 18, 2025
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