



2025:DHC:2613



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

Reserved on: 11th February, 2025

Pronounced on: 16th April, 2025

+ CRL.M.C. 6436/2023 & CRL.M.A. 24156/2023

ADITI SINGH

.....Petitioner

Through: Mr. Aditya Dewan and Mr. Sahil Chandra, Advs.

versus

AMARENDRA DHARI SINGH

.....Respondent

Through: Mr. Madhav Khurana, Sr. Adv. Mr. Mohd. Shakeib Naru, Ms. Trisha Mittal, Ms. Femitha Fathima, Ms. Shaurya Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973, (for short, 'CrPC') has been filed seeking the following prayers:-

“a. Quash and set aside the Order dated 13.09.2022 passed in Criminal Complaint no. 6073/2022 titled as Amarendra Dhari Singh vs. Aditi Singh pending before the Ld. MM (NI ACT) South-East, Saket Courts, New Delhi; and



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b. Quash and set aside the Criminal Complaint no. 6073/2022 (filed by the Respondent under Section 138 of the Negotiable Instruments Act, 1881) and pending before the Ld. MM (NI ACT) South-East, Saket Courts along with all consequential proceedings arising thereto, and/or

c. Pass any such order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The petitioner is facing trial in CC No. 6073/2022 titled as “Amarendra Dhari Singh v. Aditi Singh” for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to ‘NI Act’). The respondent herein who is supposedly maternal uncle of the present petitioner had filed the aforesaid complaint with respect to dishonour of a cheque bearing No. 000118 dated 30.03.2022 for an amount of Rs. 5,00,00,000/- (Five Crore Rupees) drawn on HDFC Bank, Ved Mansion Branch, which was subsequently presented in HDFC Bank, South Extension-I Branch. The petitioner was summoned by the learned Metropolitan Magistrate *vide* impugned summoning order dated 13.09.2022. The only ground urged before this Court in the present petition is that the impugned order dated 13.09.2022 was beyond the period prescribed of limitation under the NI Act. The relevant dates as set out in the present petition are as under: -

Relevant Date	Particulars/Remarks
31.03.2022	Return Memo was issued by HDFC Bank in relation to the subject cheque.



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25.04.2022	Statutory Legal Notice issued on behalf of the Respondent to the Petitioner in terms of Section 138 of the NI Act.
27.04.2022	Statutory Legal Notice is stated to have been received at the address of the Petitioner
12.05.2022	Fifteen-day notice period in terms of the Statutory Legal Notice lapsed, and the cause of action for filing the complaint arose
12.06.2022	Prescribed period of limitation of 30 days for filing of the complaint lapsed
22.07.2022	After about three months from the date of issuance of the Statutory Legal Notice and after an unexplained delay of more than a month when the statutory time limit had expired, the Complaint was filed by the Respondent before the Learned Metropolitan Magistrate (NI ACT) South-East, Saket Courts, New Delhi
13.09.2022	Learned Metropolitan Magistrate (NI ACT) South-East, Saket Courts, New Delhi without considering the aspect of delay took cognizance of the offence as alleged in the Complaint and consequently summons were issued to the Petitioner herein who has been made an accused in the said proceedings. The Petitioner has since been suffering the rigors of a misconceived trial



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3. Learned counsel appearing on behalf of the petitioner has submitted that the complaint filed by the respondent is in violation of the prescribed period of limitation under Section 142 of the NI Act. It is submitted that the delay in filing of the said complaint has not been explained in the complaint and the learned Metropolitan Magistrate *vide* the impugned summoning order dated 13.09.2022 mechanically took cognizance of the said complaint without even considering the fact that the complaint filed was time barred. Attention of this Court was drawn to para 25 of the complaint wherein it stated as under:-

“25. The present Complaint is being filed beyond the prescribed period of limitation as provided under the NI Act.”

4. Reliance is placed on the following judgments by the learned counsel for the petitioner in support of this petition:-

- (i) **SIL Import, USA v. Exim Aides Silk Exporters¹,**
- (ii) **MSR Leathers v. S. Palaniappan And Another²,**
- (iii) **Simranpal Singh Suri v. State³,**

¹(1999) 4 SCC 567;

² (2013) 1 SCC 177;

³2021 SCC OnLine Del 236



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5. Reliance is also placed on the following observations made by a Coordinate Bench of this Court in the judgment of **Glazebrooke Trading Private Limited v. Orbis Trusteeship Services Private Limited & Ors.**⁴, wherein, it has been observed and held as under: -

“7. The only issue germane in present proceedings is that when did the limitation commence for filing the complaint and whether the time spent in pursuing the first complaint filed before the court in Gurugram could be excluded.

16. Another contention was raised on behalf of the complainant that the issue of limitation being a mixed question of law and fact should be tested in trial and in this regard, reference was made to the decision of Co-ordinate Bench in *Pawan Kumar Ralli v. Maninder Singh Narula* reported as (2014) 15 SCC 245. On a perusal of the said decision, it is apparent that in said case, the issue of limitation was urged for the first time before High Court whereas in the present case, the issue was urged before the trial court in as much as an application was preferred by the accused seeking discharge contending that the complaint was barred by time. The said application was rejected. A perusal of the material on record would show that the complainant has always maintained that its complaint was filed in time and offered no explanation for the delay or sought its condonation. The timelines stipulated in the Act being strict, though delay in filing the complaint being condonable under proviso to Section 142 (b), the same is subject to complainant seeking its condonation and providing sufficient cause to the satisfaction of court.

17. Indisputably, the said complaint was not accompanied with any application for condonation of delay. In reply of the petitioners' application seeking discharge, the complainant for the first time mentioned the factum of filing of complaint in court at Gurugram and its withdrawal. The said reply was filed on 31.03.2023. However, on date of taking cognizance on 02.08.2022, no such material was available before the trial court. The complaint being filed on 28.04.2022 without offering

⁴2024 SCC OnLine Del 8004



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any explanation of delay or seeking its condonation was filed beyond the period of limitation and not maintainable. In coming to the said conclusion, this Court also draws support from the decision of a Coordinate Bench in D. Babu v. M/s Bhartia Industries Ltd. reported as 2009 SCC OnLine Del 496 wherein it is stated :-

“20.....Besides this petitioner has not filed any application before the concerned court to seek condonation of delay and thus not having taken recourse to the provisions of section 141(b), no benefit can be derived by respondent therefrom.

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21. However, there is nothing on record to show that any application was made for condonation of delay or any attempt was made to satisfy the Court that there was sufficient cause for not making the complaint within the stipulated time period.

22. In view of the aforesaid, I find that the criminal complaint titled as "M/s Bhartia Industries Limited Vs. D. Babu" filed by the respondent under Section 138 of the Negotiable Instruments Act in the Court of learned Metropolitan Magistrate, Patiala House, has been filed beyond the period of limitation. The same is accordingly quashed.”

18. To the similar extent is another decision in the case of *Simranpal Singh Suri* (supra) wherein on unexplained delay of one day, the order taking cognizance was set aside.”

6. *Per contra* learned Senior Counsel appearing on behalf of the respondent submitted that Section 142 of the NI Act does not mandate filing of a separate application seeking condonation of delay. It was argued that the proviso to sub-clause (b) of sub-section (1) of Section 142 of the NI Act clearly provides that a complaint may be filed even after the stipulated time period, if the complainant is able to satisfy the concerned Court that he had sufficient cause/reasons for not presenting/filing the complaint within the said stipulated time period.



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7. Reliance was placed on judgment of the Hon'ble Supreme Court in the matter of **Sesh Nath Singh And Another v. Baidyabati Sheoraphuli Co-Operative Bank Limited And Another**⁵

8. It was submitted that reasons for delay were argued before the learned Metropolitan Magistrate and the same were duly considered by him in the impugned summoning order. The said reasons for the delay as pointed out by the learned Senior Counsel for the respondent are as under:-

“a. The Complainant filed a set of 138 complaints before the CMM (NI-Act), Patiala House Courts dated 28.02.2022 for the recovery of one cheque signed by the Petitioner herein and two cheques signed by the sister and mother of the Petitioner. Post the filing of the said complaints, the Respondent herein had also preferred filing recovery and summary suits before this Hon'ble Court.

b. The Petitioner is the niece of the Respondent and upon seeing the litigation initiated between them, the family members of the Respondent insisted on mediating between the parties so that the matter gets settled. In furtherance, a close friend tried to intervene and restrain the Respondent from filing further matters.

c. The friends and relatives made multiple efforts to reach out to the Petitioner, but she was never approachable. His sister insisted on him waiting till all of them tried to solve the situation between the parties as also the husband of the Petitioner was in judicial custody in a completely unconnected matter. All efforts went in vain and as a consequence, the Respondent decided to file the complaint for the remaining cheques also.

d. The above amounted to a loss of a few days due to which the Respondent could only instruct the counsel to file the complaint towards the end of the month of May, 2022.

⁵ (2021) 7 SCC 313



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e. Henceforth, the counsel of the Respondent was under the weather for the whole first week of June, 2022, after which she was tested positive for COVID. The test report dated 10.06.2022 is attached herewith and annexed as **Annexure-1 (Pg. No.)**.

f. That the counsel did not recover from the side-effects of COVID for a whole month; she was suffering from acute rhinitis, acute viral nasopharyngitis, with relentless headache.

g. Meanwhile, the counsel developed a cyst in her body due to which she was allowed minimal movement until it was surgically removed.

h. The medical condition of the counsel disabled her from resuming work and she only returned to Delhi by the 20th July, 2022. Hence, the complaint was filed in delay.”

9. In view of the above grounds, reliance has also been placed on **Pawan Kumar Ralli v. Maninder Singh Narula**⁶, where the issue of limitation had come up for the first time before the Hon’ble High Court and it was observed that it would be appropriate for the High Court to remand the matter back to Jurisdictional Magistrate for adjudication on the grounds of delay to determine whether sufficient cause to justify the same is made out or not. It was further submitted that the Hon’ble Supreme Court has held that where the legislative mandate allows for a complainant to overcome the technicality of limitation by explaining the delay, the accused cannot be allowed to take benefit of the same.

10. Learned Senior Counsel for the respondent has also placed reliance on the observations made by the Hon’ble High Court of Karnataka at Bengaluru

⁶ (2014) 15 SCC 245



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in **Sri. S. Nagesh v. Smt. Shobha S. Aradhya**⁷, wherein, it has been observed and held as under: -

“17. The question that would really arise is — ‘**whether the satisfaction of the Court regarding the delay is to be made before cognizance is taken or if the learned Magistrate could hold that the cognizance already taken on a belated complaint could be condoned, if the learned Magistrate is satisfied that the complainant had sufficient cause for presenting the complaint belatedly**’.

18. It is to be borne in mind that the legislature has conferred expressed powers on the learned Magistrate to take cognizance even in respect of a belated complaint, if he is satisfied that the complainant had sufficient cause for the belated presentation. The fact as to whether the learned Magistrate condoned the delay after taking cognizance or whether he was required to first condone the delay and then take cognizance is a matter which does not, in any way, vitiate the taking of cognizance by the Magistrate. What would be of consequence is whether the Magistrate has condoned the delay in presenting the complaint. If cognizance is taken of an offence even when there is a delay in presentation of the offence, that would only be a curable irregularity. If the Magistrate subsequently notices that there was a delay in presenting the complaint and is satisfied that the complainant had sufficient cause for the belated presentation of the complaint and condones the delay, the irregularity in taking cognizance would stand cured.

19. It must be stated here that, originally, Section 142 of the NI Act did not provide for taking cognizance of a complaint which was presented beyond the period prescribed under Section 142 (1)(b) of the Act and it was only by way of an amendment by Act No. 55 of 2002 that a proviso was inserted empowering the Magistrate to take cognizance of the offence even when there was a delay, if the complainant satisfied the Magistrate that he had sufficient cause for such delay.

20. Since Section 142 (1)(b) originally did not provide for taking cognizance of a belated complaint, the argument that the Magistrate was required to condone the delay before taking cognizance and, until then,

⁷ 2024:KHC:24217



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he did not possess jurisdiction, cannot be a valid argument. If a Magistrate is empowered to condone the delay in presenting the complaint and then take cognizance, the mere fact that he took cognizance first and then condoned the delay would be of little consequence. It is only if the Magistrate does not condone the delay at all during the pendency of the proceedings and goes on to adjudicate the matter will the proceedings be vitiated.

21. In fact, the Apex Court in the case of Pawan Kumar Ralli⁸, while dealing with the case in which the High Court had quashed the proceedings on the ground of limitation, has observed that with a view to obviate the difficulties from a part of the complainant, the Parliament has inserted the proviso to clause (b) of Section 142 of the NI Act in the year 2002 which conferred jurisdiction on the learned Magistrate to condone the delay. The Supreme Court has also observed that a litigant should not be deprived of the remedy provided in the legislature and a genuine litigant should be allowed to pursue his case against a defaulter by overcoming the technical difficulty of limitation.

24. In the present case, as already stated above, the taking of cognizance without condoning the delay would, at best, be a curable defect, and by condoning the delay, this irregularity stood cured.

25. The learned Magistrate at the time of taking cognizance did not notice whether the complaint was within the prescribed time or not. The learned Magistrate was probably misled by the averment in the complaint at paragraph No.8 that it was within time. The learned Magistrate subsequently, after considering the sworn statement, actually noticed that there was a delay of 2 days and he also made a clear observation that his predecessor had taken cognizance without noticing the delay. He, in fact, reserved liberty to the accused to raise the question of delay during trial. This order of the learned Magistrate reserving liberty to the accused and noticing that the cognizance had been taken, even though there was a delay, has been accepted by the accused and has not been challenged. The petitioner has presented this petition four years thereafter, when orders have been passed by the learned Magistrate condoning the delay in presenting the petition.

⁸ Pawan Kumar Ralli v. Maninder Singh Narula, (2014) 15 SCC 245.



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26. In my view, in light of the fact that the learned Magistrate has ultimately condoned the delay, no prejudice has been caused to the accused by the cognizance already taken. Even if the contention advanced by the petitioner is accepted, all that would have to be done is to set aside the order taking cognizance and call upon the learned Magistrate to consider the application of condoning the delay and then consider the question of taking cognizance. Since in the instant case the complaint is of the year 2013 and the matter has been pending for more than 11 years, there would be no justification in considering this plea of the petitioner. Furthermore, since the delay of merely 2 days in filing the complaint has already been condoned, the cognizance taken, though irregular, cannot be found fault with, as the irregularity has stood cured on the delay being condoned.”

11. In view of the above, it was submitted that this Court, while exercising the power under Section 482 of the CrPC, is also vested with power to direct the appropriate authority to consider the grounds of delay as stated hereinabove.

12. It was also argued that the petitioner has approached this Court with substantial delay of one year from passing of the impugned order. It is pointed out that the complaint is presently at the stage of complainant’s (respondent) examination and he has been partially cross-examined by the petitioner on 21.08.2023.

13. Heard the learned counsel for the parties and perused the record.

14. The delay in filing the complaint in the present case is an admitted position of fact. It is also an admitted fact that no application seeking



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condonation of delay was filed alongwith the complaint before the learned Metropolitan Magistrate. The delay was disclosed in the complaint in the following manner:-

“25.The present Complaint is being filed beyond the prescribed period of limitation as provided under the NI Act.

26.That the Complainant has cogent reasons behind the delay and prays for the due consideration of the same in order to save himself of the irreparable loss that he may incur if the present Complaint is not considered.”

15. As can be noted from above, there was no specific reasons shown for seeking condonation of delay in the complaint itself. The submission on behalf of the learned Senior Counsel for the respondent that the same was argued before the learned Metropolitan Magistrate, who after duly considering the same, had issued the summons, cannot be accepted for the simple reason that in the impugned order of summoning there is no discussion of delay.

16. Section 142 of the NI Act which provides for the period of limitation and condonation thereof reads as under:-

“142. Cognizance of offences. —

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), —

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;



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(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction, —

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation. —For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

(emphasis supplied)

17. The Hon'ble Supreme Court in **Pawan Kumar Ralli** (*supra*) was dealing with a complaint case in which the complaint originally relied upon a legal notice which was sent to the accused therein and from the said legal notice, the period of limitation was calculated which was well within the time. However, subsequently, a hand written letter had surfaced which was



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sent by the complainant therein, to the accused seeking demand of the amount of the dishonoured cheque. The Hon'ble Supreme Court came to the conclusion that the said letter would constitute a legal notice within the meaning of NI Act and, therefore, while calculating limitation from the said letter, the complaint which was filed was found to be beyond the prescribed period of limitation. It was observed that since the complaint had only averred about the legal notice and not mentioned about the hand written letter based on the said averment, the learned Trial Judge was satisfied that the complaint was within the prescribed period of limitation. It was observed that in the said case raising the plea of limitation and the learned Trial Court exercising discretion to condone the delay did not arise at all. Thereafter, the Hon'ble Supreme Court held and observed as under:-

“21. In the peculiar facts and circumstances of the case, while keeping in mind the legislative intent and the specific plea of the appellant raised in the grounds for the special leave petition that he should have been allowed to move an application for condonation of delay before the trial court as the respondent has not suffered any prejudice by reason of 25 days' delay, we strongly feel that the appellant should not have been deprived of the remedy provided by the legislature. **In fact, the remedy so provided was to enable a genuine litigant to pursue his case against a defaulter by overcoming the technical difficulty of limitation.** Hence, the High Court has committed an error by not considering the issue of limitation on merits.

22. In view of the settled principles of law in *Rakesh Kumar Jain* [*Rakesh Kumar Jain v. State*, (2000) 7 SCC 656 : 2001 SCC (Cri) 208] , *MSR Leathers* [*MSR Leathers v. S. Palaniappan*, (2013) 1 SCC 177 : (2013) 1 SCC (Civ) 424 : (2013) 2 SCC (Cri) 458] and *Subodh S. Salaskar* [*Subodh S. Salaskar v. Jayprakash M. Shah*, (2008) 13 SCC 689 : (2009) 3 SCC (Cri) 834] and in the peculiar facts and circumstances of the case, we are of the considered opinion that the High



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Court was not right in quashing the complaint merely on the ground that complaint is barred by limitation, that too a plea which was taken for the first time before the High Court. On the other hand, the High Court ought to have remanded the matter to the trial court for deciding the issue of limitation. At the same time, we want to make it very clear that by this observation we are not laying down a legal proposition that without even filing an application seeking condonation of delay at an initial stage, the complainant can be given opportunity at any stage of the proceeding. As already discussed by us in the foregoing paragraphs, we have come to the irresistible conclusion, to afford an opportunity for the complainant to move an application seeking condonation of delay, under the peculiar facts and circumstances of the case.”

(emphasis supplied)

18. In the present case, as already noted hereinabove, the complaint did disclose about the fact that the same was beyond the prescribed period of limitation. Admittedly, there was no application seeking condonation of delay showing sufficient grounds for the same. The impugned order, as already noted above, neither record any submissions made on the aspect of delay nor does it consider the same. In fact, the learned Metropolitan Magistrate did not even record whether the complaint was time barred or not. The impugned summoning order was passed on 13.09.2022 and the notice of accusation under Section 251 of the CrPC was framed on 16.05.2023. It is a well settled position of law, in view of the judgment of Hon’ble Division Bench of this Court in **Court On Its Own Motion v. State**,⁹ that learned Metropolitan Magistrate has no power to recall the impugned summoning order and discharge the petitioner and the only remedy available with respect to the same, with the present petitioner was to file petition under Section 482 of the CrPC.

⁹2022:DHC:1932-DB



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19. In the light of the aforesaid facts and judgments cited before this Court, the issue which arises is whether all the proceedings including the complaint filed by the respondent should be quashed on the ground of limitation by this Court or the impugned summoning order can be set aside and the matter be remanded back afresh to the learned Trial Court in order to enable the respondent/complainant herein to show sufficient cause of delay in filing of the complaint in terms of the proviso to Section 142(1)(b) of the NI Act.

20. This Court is persuaded to examine the aspect because of the reason that in the complaint the respondent/complainant had made a complete disclosure with regard to fact that the complaint was time barred.

21. No doubt there has been oversight by the learned Metropolitan Magistrate as well as the learned counsel for the respondent at the time when the impugned order of taking cognizance was passed. The Hon'ble Supreme Court in **Pawan Kumar Ralli** (*supra*) had emphasised that the remedy provided for condonation of delay is available to “*genuine litigant*” to pursue his case under Section 138 of the NI Act to overcome the technicalities of period of limitation. In **Glazebrooke** (*supra*), relied upon by the learned counsel for the petitioner, the issue of delay was disputed by the complainant therein, which is not the case in the present proceedings.

22. In the considered opinion of this Court, if there is a remedy provided for in law for condonation of delay and if sufficient reasons are shown to



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condone the same, then the complainant, in such cases, ought to be given a chance to justify such delay. The Hon'ble Supreme Court in **Sesh Nath Singh** (*supra*) has also stated that a formal application may not be necessary for condonation of delay, if the learned Metropolitan Magistrate while taking cognizance applies his mind to the said issue and condones the delay. In the present proceedings, the same was not done by the learned Metropolitan Magistrate despite the fact of delay being disclosed by the petitioner/accused. In these circumstances, the impugned order of summoning cannot be sustained and the proceeding in pursuance of the same cannot be continued.

23. In these circumstances, the matter is remanded back to the learned Trial Court at the stage of taking cognizance in order to examine the reasons for seeking condonation of delay, which will be decided by the concerned Court in accordance with law. The respondent herein, will be at liberty to put forth the grounds seeking condonation of delay.

24. In view of the aforesaid discussion and facts and circumstances of the present case, the impugned summoning order dated 13.09.2022 passed in Criminal Complaint No. 6073/2022 titled as "Amarendra Dhari Singh vs. Aditi Singh" is hereby set aside.

25. The petition is partly allowed and disposed of alongwith pending application(s), if any.



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26. Let the judgment be communicated to learned Trial Court which shall fix a date for taking cognizance.

27. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J.

APRIL 16, 2025/nk/bsr