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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 7687/2025, CRL.M.A. 32133/2025 & CRL.M.A.
32134/2025

RAJEEV GUPTA

.....Petitioner

Through: Mr. Raja Choudhary, Ms. Anushika
Mishra, Mr. Devender Sharma, Mr.
Kapil Kumar and Mr. Dhruv Tiwari,
Advocates.

versus

STATE OF NCT OF DELHI & ANR

.....Respondents

Through: Mr. Amit Ahlwat, APP for the State
along with SI Umesh Yadav, PS IGI
Airport.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
31.10.2025

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1. The present petition seeks quashing of FIRs registered under Section 174 of the Indian Penal Code, 1860¹ at PS IGI Airport, New Delhi, arising out of proclamation proceedings in cheque-dishonour cases. The petition is confined to the Petitioner, Mr Rajeev Gupta; proceedings against the co-accused, Surender Kumar, are not in issue here.
2. The impugned FIRs trace back to complaints under Section 138 of the Negotiable Instruments Act, 1881², instituted by Fashion Makers Group. As

¹ "IPC"

² "NI Act"



the Petitioner failed to appear, the Trial Court, after issuing non-bailable warrants on 7th April 2025, proceeded to initiate proclamation proceedings under Section 82 of the Code of Criminal Procedure, 1973³. Subsequently, by order dated 27th June 2025, the Petitioner was declared an ‘absconder’, and directions were issued for registration of FIRs under Section 174 of the Indian Penal Code, as detailed below:

Process server has submitted that despite best efforts, accused Rajeev Gupta, S/o Sh. Surinder Gupta, proprietor/signatory of M/s Rameshwar Das Surinder Kumar and accused Surender Kumar, S/o Sh. Rameshwar Das having office at 5523, Moti Katra, Nai Sarak, Chandni Chowck, Delhi-110006 and at D-38, Kamla Nagar, Delhi-110007 could not be found. Separate statement of Process Server who executed the process u/s 82 of the Code of Criminal Procedure, 1972 against accused persons is recorded whereby I am satisfied that process u/s 82 of the Cr.PC has been properly executed against the said accused persons.

Despite repeated calls since morning, the accused persons have not appeared either physically or through VC.

Hence, it can be safely deduced that either the said accused persons are absconding or concealing themselves from the process of law, and acting as a hindrance in the court of justice.

Heard. File perused.

Accordingly, accused Rajeev Gupta, S/o Sh. Surinder Gupta, and accused Surender Kumar, S/o Sh. Rameshwar Das are hereby declared as absconder.

The SHO concerned is directed to file compliance report as to what steps have been taken to apprehend the accused. The SHO concerned is also directed to lodge an appropriate FIR u/s 174 of the IPC.

Put up for filing of compliance report on 29.07.2025.

Copy of the order be sent to the SHO concerned through the process server for necessary compliance.

Copy of this order be given dasti, as prayed for.

3. The Petitioner explains his non-appearance by pointing to continuous judicial custody since 23rd December, 2024 in case CBI RC No.

³ “Cr.P.C.”



1202021A0002 (Sections 120-B/420/471 IPC) at P.S. CBI/ACB/Ghaziabad. A custody certificate from the District Jail, Ghaziabad has been placed on record to that effect. On this premise, it is urged that the statutory precondition for a proclamation, namely, the Court's "reason to believe" that the accused has absconded or is concealing himself to avoid execution of a warrant, could not have been satisfied when the accused was already in lawful custody. The consequential FIRs under Section 174 IPC are, therefore, an abuse of process.

4. Mr. Amit Ahlawat, APP for the State, on the other hand, submits that it was incumbent upon the Petitioner to engage a counsel to apprise the Trial Court of his incarceration. Since no intimation was given, the Trial Court rightly directed registration of the impugned FIRs.

5. The Court has considered the aforementioned facts and contentions. Section 82(1) of the Cr.P.C. (*pari materia* Section 84(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023), permits proclamation only when the Court has "reason to believe" that the accused has absconded or is concealing himself to avoid execution of a warrant of arrest. In the present case, the Petitioner has remained in judicial custody since 23rd December, 2024 in connection with another case (RC No. 1202021A0002). In these circumstances, the very foundation for forming a "reason to believe" that the Petitioner was absconding stands negated.

6. There is an additional legal facet. Section 174 of the IPC penalises non-attendance in obedience to a lawful order, but the offence is limited to *intentional* omissions. Where non-appearance arises from circumstances beyond one's control, such as lawful custody elsewhere, the requisite intent is lacking and the provision does not apply. More importantly, the criminal



law has a structured mechanism to deal with precisely such situations. The Court can issue production-warrant under Section 267 CrPC (now Section 349 BNSS) to secure presence of a prisoner in custody, rather than presume evasion. To short-circuit that process by declaring a prisoner as an absconder, and by directing registration of FIRs premised on wilful evasion, is a misdirection in law. Accordingly, the continuation of the impugned FIRs under Section 174 IPC, premised on an untenable assumption of wilful evasion, is wholly unjustified and constitutes an abuse of the process of law.

7. In view of the above, the present petition is allowed. FIR Nos. 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544 and 545 of 2025, registered at Police Station IGI Airport, New Delhi, are hereby quashed *qua* the Petitioner, Rajeev Gupta. For clarity, proceedings against the co-accused, Surender Kumar, are unaffected and shall proceed in accordance with law.

8. The Trial Court in the NI Act matters is at liberty to secure the Petitioner's presence, as required, by issuing appropriate production warrants under Section 267 of Cr.P.C. (now Section 349 of BNSS) or by permitting appearance through counsel/VC where law permits, so that the underlying complaints may progress without avoidable delay.

SANJEEV NARULA, J

OCTOBER 31, 2025/MK