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

+ CRL.REV.P.(NI) 4/2024

RAJBIR YADAV

.....Petitioner

Through: Mr. Rohit Kumar, Mr. Himanshu
Verma and Ms. Nishtha Jain,
Advocates.

versus

VINOD KUMAR

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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07.08.2024

CRL.M.A. 23312/2024 (exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

CRL.REV.P.(NI) 4/2024

By way of the present criminal revision petition filed under sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'), the petitioner impugns judgment dated 27.05.2024 passed by the learned Additional Sessions Judge, Dwarka Courts, New Delhi in Criminal Appeal No.69/2022, whereby the learned Sessions Judge has dismissed the appeal challenging judgment of conviction dated 11.01.2022 and sentencing order dated 18.02.2022 passed by the learned Metropolitan Magistrate (NI Act-03), Dwarka Courts, New Delhi in proceedings bearing Ct. Case No.17540/2019 under section 138 of Negotiable Instruments Act, 1881 ('NI Act').



2. *Vide* judgment dated 11.01.2022 passed by the learned Magistrate, the petitioner has been convicted for the offence under section 138 of the NI Act and *vide* sentencing order dated 18.02.2022, he has been sentenced to simple imprisonment of 01 year with a fine of Rs.12,00,000/- to be paid as compensation, with a default imprisonment of 03 months.
3. Mr. Rohit Kumar, learned counsel for the petitioner submits, that one of the main grounds of defence raised by the petitioner is that the cheque which came to be dated 14.03.2019 for the sum of Rs.12,00,000/- and was presented for payment, had been stolen from the petitioner's house on 04.08.2017, in respect of which the petitioner had registered an FIR dated 04.08.2017 at the concerned police station.
4. Counsel points-out, that in their reply dated 11.04.2019 sent to notice dated 29.03.2019 received from the respondent under section 138 of the NI Act, the petitioner had already cited this reason.
5. Counsel submits that even on 28.08.2019, when notice was being framed under section 251 of the Code of Criminal Procedure, 1973, the petitioner had taken this defence before the learned Magistrate.
6. Counsel further submits that the petitioner had also taken the stand that he had never taken any loan from the respondent; and moreover that the respondent did not even have the capacity to lend Rs.12,00,000/- to the petitioner.
7. The petitioner is stated to have deposited the sum of Rs.2,40,000/-, being 20% of the compensation awarded, before the learned Sessions Judge.



8. Issue notice.
9. Upon the petitioner taking requisite steps, let notice be sent to the respondent by all permissible modes, returnable for the next date.
10. Let the notice indicate that reply to the petition be filed within 06 weeks of service; rejoinder thereto, if any, be filed within 04 weeks thereafter; with copies to the opposing counsel.
11. Let the Trial Court Record be requisitioned in electronic form; with copies to the counsel for the parties.
12. Re-notify on 22nd November 2024.

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13. By way of the present application filed under section 438 read with section 528 of BNSS, the petitioner seeks suspension of sentence pending consideration of the present revision petition.
14. Counsel submits that *vide* order dated 05.07.2024 made by the learned Magistrate on an application filed by petitioner seeking suspension of sentence, the petitioner's sentence was suspended up-to 05.08.2024; however since on 05.08.2024, the learned Magistrate was on leave, the suspension of sentence has been continued until 09.08.2024.
15. In view of the above, and considering the nature of the offence and the fact that the petitioner has relied upon an FIR dated 04.08.2017, stated to have been filed by him, wherein he had alleged that the subject cheque had been stolen almost 1-½ years before it was presented for encashment, the petitioner's sentence shall remain suspended, till the next date of hearing.



16. In the meantime, the petitioner is directed to place on record a copy of FIR dated 04.08.2017 as well as of a complete order sheet of the learned Magistrate before the next date.
17. Re-notify on 22nd November 2024.

AUGUST 7, 2024/ak

ANUP JAIRAM BHAMBHANI, J