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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL. L.P. 352/2011

M/S.DOLPHIN FREIGHT MOVERS PVT. LTD.

..... Petitioner

Through: Mr. Shashank Rai, Advocate.

versus

THE STATE & ANR.

..... Respondent

Through: Ms.Fizani Husain, APP.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

ORDER

% **28.11.2011**

This is a petition under Section 378(1) CrPC seeking leave to appeal against the judgment dated 8.4.2011 of learned M.M., Saket Courts in CC No. 1821/1/02 under Section 138, N.I.Act.

Vide the impugned order, the complaint filed by the petitioner under Section 138, N.I.Act was dismissed in default as well as for non-prosecution resulting in acquittal of the respondent No. 2. Vide the present petition, permission is sought to grant leave to appeal against the impugned order. It is stated that the counsel for the complainant/petitioner appeared in the court of learned M.M. on 14th December, 2010 and inadvertently noted the date as 21st March, 2011 and when the counsel appeared in the court on 21st March, 2011, he learnt about the case having been adjourned to 08th April, 2011. With regard to non-appearance of petitioner and its AR on 08th April, 2011, it is averred that counsel for the petitioner/complainant telephonically informed his A.R. that he shall not be available on the next date of hearing i.e. 08.4.2011 and so advised him

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to appear on 08.4.2011 and attend the hearing of the case fixed for further cross examination of the A.R.. It is averred that on 08.4.2011, the A.R. Mr. Sharma telephonically informed the counsel that he would not be available to appear because of sickness of his son and since the counsel was out of station, he requested a proxy counsel to apprise the court of reason of non-appearance of A.R. and of the counsel. On this date i.e. 8th April, 2011, proxy counsel appeared and made an oral request which was declined vide the impugned order. The absence of the complainant, A.R. and the counsel are stated to unintentional and due to the reasons as noted above.

I have heard counsel for the petitioner and perused the record.

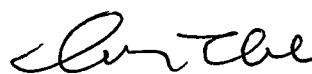
From the proceedings conducted on 8.4.2011 of learned M.M., it would be seen that none appeared for petitioner despite repeated calls. The matter was listed for further cross examination of the A.R. of the petitioner/complainant since 27.10.2010. On this day i.e. 27.10.2010, an adjournment had been sought by the petitioner/complainant for production of documents by the A.R. Thereafter, the matter was adjourned for further cross examination of the A.R. of the complainant company. It was specifically noted by the learned MM. that the A.R. had not been appearing in the court for the last three dates for his cross examination whereas the accused/respondent No. 2 herein had been appearing regularly. It is also specifically noted that on the last date of hearing, the case was adjourned at the behest of the complainant/petitioner against the payment of cost of Rs. 1000/- to be deposited in DLSA and it was specifically noted that this was the last opportunity for the petitioner/complainant to be present in person and pursue its case. Admittedly, the cost had not been deposited by the petitioner as ordered. It was only the proxy counsel who had appeared at 12.30 p.m. after repeated calls made since morning. Learned M.M. noted that keeping in view the previous conduct of the complainant, there was no ground for exemption of A.R. made out

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on that day. The learned M.M. has noted down the conduct of the A.R. and the complainant in not being serious to pursue the complaint.

Learned counsel appearing for the petitioner/complainant when confronted with the proceedings and the order recorded by the learned M.M. on 08.4.2011 had no justification or explanation except that it was all by mistake. It was not a mistake committed on one date of hearing, but it was a clear case of non-appearance due to insufficient and cogent reasons. So much so, the cost imposed had not been deposited and no reason was given for the same. The conduct of the petitioner would be further noticed from the fact that this petition was filed on 25th July, 2011 and though the PF was filed by the petitioner but the same was returned under office objection and no steps were taken by the petitioner to remove the objection. To this also, counsel for the petitioner expressed ignorance. From this, it appears that the petitioner is not at all serious in pursuing its case. Thus, I do not find any infirmity or illegality in the impugned order.

Leave Petition is accordingly dismissed.


M.L. MEHTA, J

NOVEMBER 28, 2011

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