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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 368/2011

R N CHAUDHARY

..... Petitioner

Through: Mr. S. A. Sattar, Adv.

versus

BASHIR A HAMI

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

ORDER

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23.11.2011

Crl. M.A. No. 9056/2011

1. This is an application seeking condonation of 73 days delay in filing leave to appeal bearing no. 368/2011 against the order dated 23.02.2011, by virtue of which the case of the appellant under Section 138 of the Negotiable Instruments Case was dismissed for non-prosecution. The reasons for delay are that the appellant had filed a revision before the Court of Sessions which he had withdrawn on 01.04.2011 on account of the fact that the order of acquittal dated 23.02.2011 was an appealable order under Section 378 sub clause 4 Cr.P.C. It is stated that on account of the fact that the appellant had filed the revision and subsequent thereto his wife allegedly suffered from Hepatitis, this caused 73 days delay in filing the appeal.

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

2. I have heard the learned counsel for the petitioner and have perused the record.
3. For the reasons mentioned in the application, the delay of 73 days in filing the leave to appeal is condoned and the application stands allowed.

Crl. L.P. No. 368/2011

4. This is a leave to appeal filed by the appellant against the order dated 23.02.2011 by virtue of which the complaint of the appellant under Section 138 of the Negotiable Instruments Act was dismissed u/S 256 Cr.P.C. and the respondent was acquitted of the charge.
5. I have heard the learned counsel for the appellant and have perused not only the order sheet but also the complete record.
6. The appellant had filed a complaint under Section 138 of the Negotiable Instruments Act against the respondent in the year 2003. After examining the complainant, the Trial Court passed the order of summoning on 02.07.2003 and the matter was adjourned to 15.12.2003. Till the date of dismissal on 23.2.2011, the appellant was not able to procure the attendance of the respondent/accused. On number of occasions, the notices could not be issued to the respondent/accused for want of process fee. Even the non-bailable warrants could not be

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executed against the respondent/accused as a consequence of which proclamation under Section 82 and 83 Cr.P.C. was directed to be issued against the respondent/accused as early as on 09.09.2008 on filing of process fee. This was also not complied with.

7. A perusal of the order sheet dated 03.11.2010 shows that consistently for three dates, the appellant did not appear. It seems that the appellant had reconciled to his fate that he could not procure the attendance of the respondent/accused and the proclamation under Section 82 and 83 Cr.P.C. would not bring any result. On 23.02.2011, the learned Metropolitan Magistrate has recorded that there was no appearance on behalf of the complainant and consequently the complaint was dismissed under Section 256 Cr.P.C. for non appearance of the complainant and the accused was acquitted. It is against this order the appellant has belatedly filed the present leave to appeal against the respondent. I do not find that the facts of the case are such when it has taken almost 8 years to the appellant not even to procure the attendance of the respondent/accused, it will not be worth to set aside the order dated 23.02.2011 and restore the matter to its original number and put the complaint back in rail to enable him to serve the

respondent for another time. It will put premium on the conduct of the appellant which is of gross negligence.

8. For the reasons mentioned above, I feel that there is no ground which will warrant the grant of leave to appeal. Accordingly, the leave to appeal is dismissed.



V.K. SHALI,J

NOVEMBER 23, 2011
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