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

+ CRL.L.P. 51/2010

MUKESH SHARMA

..... Petitioner

Through

Mr. Shyam Dutt, Adv.

Mr. Sanjev Kumar Dhaka, Adv.

versus

STATE & ANR

..... Respondent

Through

Ms. Fizani Husain, APP.

Mr. Dinesh Kr. Tiwari, For R-2

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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06.11.2012

Crl.M.A.2142(Delay)

For the reasons explained in the application, the delay is condoned.

Application is disposed of.

Crl.L.P.51/2010

Leave to appeal is granted. Registry to register this petition as an appeal.

Crl.A.No. 1311 /2012(to be numbered)

Appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the Act). After recording pre-summoning evidence respondent no.2 (accused) was summoned by the

trial court. During the pendency of trial appellant remained unrepresented before the court on 20th November, 2009, consequently, complaint has been dismissed in default.

That is how, appellant is before this Court by way of present appeal.

It is contended that on 20th November, 2009 appellant could not appear in court as he was unwell. Counsel for the appellant was not in town that day. Accordingly, appellant remained unrepresented on 20th November, 2009. Copy of the medical certificate issued by Dr.N.K.Mittal (Ghaziabad) has been placed on record which shows that appellant was unwell and was advised bed rest. Non-appearance was neither intentional nor willful but was for the reasons beyond the control of appellant. Medical certificate supports the version of the appellant. Since on 20th November, 2009 appellant was unwell and his counsel was out of station he remained unrepresented. Otherwise, endeavour of the Court should be to dispose of the matter on merits instead of dismissal thereof on technicalities. As regards inconvenience caused to the counsel for the respondent no. 2 he can be compensated in terms of cost.

For the foregoing reasons, impugned order dated 20th November, 2009 is set aside and the complaint is restored to its original number subject

to, however, cost of Rs.25,000/-, out of which Rs.10,000/- be deposited with the Delhi Legal Services Authority and the remaining amount be paid to respondent.

Parties are directed to appear before the trial court on 3rd December, 2012.

Appeal is disposed of in the above terms.



A.K. PATHAK, J

NOVEMBER 06, 2012

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