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

CNR No. DLHC010234882022

+ **CRL.REV.P. 384/2022**

VIJAY SANWARIA

.....Petitioner

Through: **Ms. Snehlata Jha, Advocate.**

versus

PUSHPA KUMARI

.....Respondent

Through: **Mr. Anuj Agarwal, Mr. Ashish Kumar Singh and Mr. Lokesh Garg, Advocates.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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12.08.2026

1. The petition is for the following reliefs:

“(i) set aside the impugned order dated 08.03.2022 passed by the Ld. Additional Sessions Judge-02, South East, Saket District Courts, New Delhi in Criminal Appeal No. 372 of 2019 and the revision petition of revisionist/accused may kindly be accepted and the revisionist/accused be acquitted;

(ii) call for the records and proceedings of Criminal Appeal No. 372 of 2019 confirming the sentence passed by the Ld. MM-03 (NI Act), South East, Saket Courts, New Delhi in CC No. 637657/2018.”

2. A bare perusal of the facts would reveal that the respondent/complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 before learned MM, South East, Saket Court, New Delhi against the petitioner/accused after two cheques totalling



₹4,50,000 were allegedly dishonoured for ‘funds insufficient’ and remained unpaid despite the service of a legal demand notice on 12.08.2014. The petitioner was convicted by the learned MM-03, South East, Saket, New Delhi on 12.03.2019, and was sentenced to one year of simple imprisonment and Rs.7 lakh fine/compensation. The appellate Court/ASJ-02, South East District, Saket, New Delhi suspended the sentence and granted bail upon notice issuance on 12.07.2019 after the petitioner paid ₹70,000. However, *vide* order dated 08.03.2022, the learned ASJ-02 dismissed the appeal (“**Impugned Order**”), and a perusal of the impugned order would indicate that the petitioner’s appeal has been dismissed on the ground of delay of two months.

3. Learned counsel for the petitioner has explained various grounds in paragraph nos. A to H in the petition, which are extracted as under:

“A. Because the Ld. Courts below passed the impugned judgments contrary to law based on conjectures and surmises and committed grave illegality as the complainant failed to prove offence committed u/s 138 of NI Act, 1881.

B. Because Ld. Appellate Court failed to appreciate that the revisionist/accused has specifically averred in his application for condonation of delay that there were settlement talks were going on between the revisionist/accused and the respondent/complainant. Furthermore, the respondent/complainant had also received the payment of Rs.70,000/- by way of demand draft.

C. Because the Ld. Courts below erroneously passed the impugned judgments in absence of any iota of evidence on record by the complainant to show the source of money which was given to the revisionist/accused as loan of Rs. 4,50,000/-.

D. Because the Ld. Appellate Court failed to appreciate that the Courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation. In the present case, the revisionist/accused has shown the sufficient cause for not filing the appeal within the period of 30 days



which was also admitted by the respondent/complainant as the respondent/complainant had also received the amount of Rs. 70,000/- by way of demand draft from the accused.

E. Because the Ld. Courts below failed to appreciate that the respondent/complainant during her cross examination had admitted that alleged loan was given to the revisionist/accused without executing any receipt or agreement/promissory note.

F. Because the Ld. Courts below failed to appreciate that the respondent/complainant failed to establish her financial capacity to show that she was capable of advancing loan of Rs. 4,50,000. Although, the accused did not lead any defence evidence but he has succeeded in rebutting the presumption under 139 of Negotiable Instrument Act, 1881 by disproving the case of the complainant.

G. Because it is settled law in criminal jurisprudence that the complainant has to prove his case beyond reasonable doubt and the accused to prove his defence in on the balance of probabilities.

H. Because the impugned order(s) are palpably perverse, illegal, unsustainable, contrary to record and unjustified. The impugned order has resulted into grave injustice and thus, liable to be set aside. I. Because the impugned order(s) passed Ld. Appellate Court is bad in law and contrary to facts and thus liable to be set aside.”

4. The Supreme Court in the case of **Madan Lal Kapoor v. Rajiv Thapar**¹, has observed that a criminal appeal or revision must always be decided on its substantive merits. The relevant para nos. 4-8 is extracted as under: -

“4. The matter relates to administration of criminal justice. As held by this Court, a criminal matter cannot be dismissed for default and it must be decided on merits. Only on that ground the appeal deserves to be allowed.”

5. Thus, in *Bani Singh v. State of U.P.* [(1996) 4 SCC 720: 1996 SCC (Cri) 848], a three-Judge Bench of this Court held that a criminal appeal should not be dismissed in default but should be decided on merits. If despite notice neither the appellant nor his counsel is present, the court should decide the appeal on merits. If the appellant is in jail the court can appoint

¹ (2007) 7 SCC 623.



a lawyer at State expense to assist it. This would equally apply to the respondent.

6. In Bani Singh v. State of U.P. [(1996) 4 SCC 720: 1996 SCC (Cri) 848] the Supreme Court overruled its earlier decision in Ram Naresh Yadav v. State of Bihar [AIR 1987 SC 1500: 1987 Cri LJ 1856] in which it was held that a criminal appeal can be dismissed for default.

7. In Parasuram Patel v. State of Orissa [(1994) 4 SCC 664: 1994 SCC (Cri) 1320] the Supreme Court held that a criminal appeal cannot be dismissed for default.

8. In our opinion the same reasoning applies to criminal revisions also, and hence a criminal revision cannot also be dismissed in default.”

(Emphasis Supplied)

5. Bearing in mind that the appeal was against the petitioner's conviction, it should not have been dismissed solely on technical grounds, as the petitioner has a substantive right to appeal against conviction. Therefore, in view of the aforesaid facts and circumstances, the impugned order stands set aside.

6. Let the appeal be restored to its original number, be heard on merits, and be decided expeditiously.

7. The parties undertake that they shall not seek any adjournment before the Appellate Court.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 12, 2026

aks/AD