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

+ **CRL.L.P. 402/2014**

M/S K & CO THROUGH ITS MANAGER Petitioner

Through: Mr. Davinder N. Grover, Advocate with
Mr. Rajeev Wassan, Advocate

versus

PAAM PHARMACEUTICALS LTD & ORS Respondent

Through: Mr. Atul Sahi, Advocate

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

ORDER

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06.01.2016

Having heard learned counsel for the parties, this Court is of the view that

there are sufficient grounds for grant of leave to appeal.

Accordingly, the Criminal Leave Petition is allowed. The matter is directed to be registered as Criminal Appeal.

CRL.A. 18 /2016 (To be Numbered)

The present is an appeal under Section 378 of the Code of Criminal Procedure, 1973 (Cr.P.C.) assailing the order dated 15.04.2014 passed by the learned Metropolitan Magistrate, Special Court (NI Act), Saket, New Delhi whereby Complaint Case No.2353/1 titled as "*K and Co. vs. Paam Pharma & Ors.*", under Section 138 of the Negotiable Instruments Act, 1881 instituted by the appellant/complainant was dismissed in default.

A perusal of the said order reveals that the order impugned herein was

occasioned on account of the mistake on the part of the counsel appearing on

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behalf of the appellant herein in recording the next date of hearing before the concerned Magistrate. The extract of the case diary of the counsel for the appellant is annexed to the present appeal as Annexure P-5 in support of his submission.

After hearing counsel for the parties, it is apparent that the appellant has not been negligent in prosecuting the complaint before the concerned Magistrate.

In view of the foregoing, the plea urged on behalf of the appellant seems to be genuine. The complaint filed on behalf of the appellant has not been heard or adjudicated on merits.

In my considered opinion, an opportunity must be granted to the appellant/complainant to prosecute the complaint before the concerned Magistrate.

The present appeal is, consequently, allowed. The order impugned herein dated 15.04.2014 is set aside. The complaint case being CC No.2353/1 titled "*K and Co. vs. Paam Pharma & Ors.*", under Section 138 of the Negotiable Instruments Act, 1881 is restored to its original number and remanded back to the Court of the concerned Metropolitan Magistrate, Special Court (NI Act), Saket subject to the payment of Rs.2,000/- as costs to the private respondent within a period of two weeks from today.

List this matter before the concerned Metropolitan Magistrate on 02.02.2016 for hearing and adjudication of the above mentioned complaint case

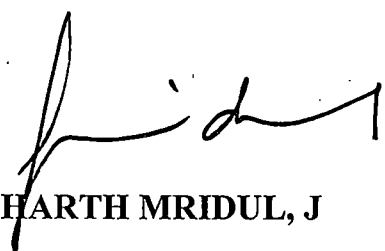
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in accordance with law.

The appeal is disposed of accordingly.

A copy of this order be sent to the concerned Metropolitan Magistrate for necessary information and compliance.



SIDDHARTH MRIDUL, J

JANUARY 06, 2016

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