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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 23.03.2016

+ CRL.L.P. 556/2015

VIJAY MANCHANDA

..... Petitioner

Through Mr. Suhail Malik, Advocate

versus

STATE OF NCT DELHI & ANR

..... Respondents

Through Mr. M.S. Oberoi, APP for the State
Mr. Deepak Kohli, Adv. for R-2

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is an application under Section 378 praying for grant of leave to appeal against the impugned order dated 08.04.2015 whereby the criminal complaint being CC No. 165/2014 filed by the leave petitioner under Section 138 of the Negotiable Instruments Act, 1881 was dismissed for non-appearance.

2. Since the complaint case filed on behalf of the leave petitioner has not been decided on merits, in my view, the leave to appeal as prayed for has to

be granted. The leave petition is accordingly allowed. The leave petition be registered as appeal.

CRL.A. No. 319 /2016 (To be Numbered)

1. With the consent of counsel appearing on behalf of the parties, the appeal is heard and disposed of by this order.
2. A perusal of the impugned order dated 8th April, 2015 discloses that the complainant (appellant herein) has been remiss in prosecuting his complaint filed before the concerned Magistrate, Karkardooma Courts, Delhi. Consequently, since the complainant, despite repeated opportunities, failed to remain present, the complaint has been dismissed in default.
3. Mr. Deepak Kohli, learned counsel appearing on behalf of the respondent no. 2 states that he would have no objection to the subject complaint being remitted back to the concerned Magistrate for further proceedings in accordance with law, if this Court were to award costs for the inconvenience and expenses caused to the respondent no. 2.
4. In the present case, it is observed that the complaint has not been heard or adjudicated on merits.

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5. In view of the foregoing, the present appeal is allowed. The complaint must be adjudicated on its merits and an opportunity to do so must be granted to the complainant.

6. Resultantly, the complaint case being CC No. 165/2014 titled as *Vijay Manchanda vs. Surinder Kumar Bhola* is restored to the file of the concerned Magistrate, Karkardooma Courts, Delhi, subject to payment of Rs.10,000/- as costs to respondent No. 2, to be paid within a period of four weeks from today.

7. It is made clear that this is the final opportunity granted to the complainant to prosecute his case before the concerned Magistrate. No further opportunity shall be granted.

8. List the matter before the concerned Magistrate on 2nd May, 2016.

9. The appeal is disposed of accordingly.

10. A copy of this order be sent to the concerned Magistrate, Karkardooma Courts, Delhi for necessary compliance.

MARCH 23, 2016
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SIDDHARTH MRIDUL, J