

§ 44 & 45

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.L.P. 426/2014 *ev Appeal 371/2016*

MATA VAISHNO FINSEC SERVICES

Through: Mr.Madhu
Advocate.

..... Petitioner
Sudan Bhayana,

versus

SIRAJ KHAN

Through: None.

..... Respondent

AND

+ CRL.L.P. 435/2014

MATA VAISHNO FINSEC SERVICES

Through: Mr.Madhu
Advocate.

..... Petitioner
Sudan Bhayana,

versus

SIRAJ KHAN

Through: None.

..... Respondent

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

% **ORDER**
04.04.2016

CRL.L.P. No.426/2014

CRL.L.P. No.435/2014

1. Leave granted. The Registry is directed to register the petitions as appeals.

2. These two appeals have been preferred by the appellant impugning
Crl.L.P. Nos.426 & 435 of 2016

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been compared and the digital data is as per
the physical file and no page is missing.

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the order dated 03.05.2014 whereby the two complaint cases filed under Section 138 of Negotiable Instrument Act read with Section 420 IPC have been dismissed for non-prosecution and respondent Siraj Khan has been acquitted of the charges levelled against him.

3. Notice was issued to the respondent Siraj Khan several times but the process received back unserved with the report that he is not residing at the given address.

4. I have heard learned counsel for the appellant and carefully gone through the record.

5. The two complaint cases filed by the appellant under Section 138 of Negotiable Instrument Act read with Section 420 IPC have been dismissed by the learned MM by passing the identical orders dated 03.05.2014 which read as under:

'03.05.2014

*Present : None for the complainant.
Accused in person.
Be awaited.*

*Sd/-
MM/Dwarka
03.05.2014*

12.30 pm

*Present : None for the complainant.
Accused in person.
Be awaited.*

*Sd/-
MM/Dwarka
03.05.2014*

2.00 pm

*Present : None for the complainant.
Accused in person.*

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Despite several calls since morning, none has appeared on behalf of the complainant. No intimation on behalf of the complainant has also been received.

Keeping in view the fact that none has appeared on behalf of the complainant, accordingly, present complaint case is dismissed for non-prosecution. Accused stands acquitted of the charges levelled against him. His bail bond stands cancelled and surety stands discharged. Case file be consigned to record room.

*Sd/-
MM/Dwarka
03.05.2014*

6. Mr.Madhu Sudan Bhayana, Advocate for the appellant has submitted that he was diligently prosecuting the complaint cases right from the stage of their institution and it was due to wrong noting of the date in his diary that he could not appear before the learned MM on 03.05.2014 which resulted into dismissal of both the complaint cases for non-prosecution as well acquittal of the respondent. Alongwith the appeal, the learned counsel for the appellant has also annexed with the petition the photocopy of his diary for the relevant dates of hearing fixed before the learned MM i.e. for 13th March, 2014, 3rd May, 2014 and 5th May, 2014. Learned counsel for the appellant submits that in these cases the date has been wrongly noted as 5th May, 2014 instead of 3rd May, 2014 and due to this reason he could not appear before the learned MM on 3rd May, 2014. It was only on 5th May, 2014 when he alongwith the complainant appeared before the learned Trial Court, he came to know about the dismissal of both the complaint cases for non-prosecution and acquittal of the respondent on 3rd May, 2014.

7. Learned counsel for the appellant has also produced his original diary
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which has been perused. He has prayed for setting aside the order dated 3rd May, 2014 and restoration of the complaint cases as his non-appearance on the relevant date was not intentional but due to wrong noting of the date.

8. Considering the facts and circumstances of the case and that it was due to wrong noting of the date of hearing that the complainant or his counsel could not appear before the learned Trial Court on 3rd May, 2014 when both the complaint cases were dismissed for non-prosecution, the litigant should not be made to suffer for the lapse on the part of the counsel. Hence, the order dated 3rd May, 2014 passed in both the complaint cases are set aside. The Complaint Cases restored to their original numbers. The parties are directed to appear before the concerned Court on 21st April, 2016.

9. Both the appeals are allowed.

10. A copy of this order be sent to the concerned Court for information and compliance.

As prayed, copy of the order be given dasti to learned counsel for the appellant.

Crl.M.A.No.4615/2016 in Crl.L.P. No.426/2014

Crl.M.A.No.4614/2016 in Crl.L.P. No.435/2014

Dismissed as infructuous.


PRATIBHA RANI, J.

APRIL 04, 2016

'st'