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

+ CRL.L.P. 334/2014

Cr Appeal 426/2016

DELHI SCHEDULE CASTES FINANCIAL &
DEVELOPMENT CORPORATION LTD

..... Petitioner

Through: Mr.Rahul Chauhan, Advocate proxy
counsel for the petitioner.

versus

GOPAL SHANKAR

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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28.04.2016

1. Leave granted. The Registry is directed to register the criminal leave petition as an appeal.
2. The instant appeal has been filed by the appellant impugning the order dated 10.01.2014 whereby the complaint case filed by the petitioner under Section 138 & 141 of Negotiable Instrument Act has been dismissed under Section 256(1) Cr.P.C. by the learned Trial Court and accused/respondent has been acquitted.
3. Notice was issued to the respondent but none had appeared on behalf of the respondent despite service through his mother.
4. I have heard learned counsel appearing on behalf of the appellant and carefully gone through the record.

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

5. Vide impugned order dated 10.01.2014, the complaint case filed by the appellant under Section 138 and 141 of Negotiable Instrument Act has been dismissed by the learned MM under Section 256(1) Cr.P.C. due to non-appearance of the complainant on the said date.

6. Learned counsel appearing on behalf of the appellant submits that it is a case of wrong noting of the date as 14.01.2014 instead of 10.01.2014. He further submits that even the process fee has been filed mentioning the date of hearing as 14.01.2014. He has also placed on record the copy of his diary for the relevant dates i.e. 20.09.2013, 10.01.2014 & 14.01.2014 as well the receipt of process fee filed on 20.09.2013 for the date of hearing 14.01.2014. Learned counsel for the appellant has further submitted that since 14.01.2014 was holiday on account of '*Makar Sankranti*' and '*Ēid-UL-Milad*', he attended the Court on 15.01.2015 and on not finding the case mentioned in the cause list, he inquired about the same and came to know that the complaint case has been dismissed in default on 10.01.2014. He has prayed for setting aside the order dated 10.01.2014 and restoration of the complaint case as non-appearance on behalf of the complainant on the relevant date was not intentional but due to wrong noting of the date.

7. In this case, it was due to wrong noting of the date of hearing that authorised representative of the complainant company or its counsel could not appear before the learned Trial Court on 10.01.2014 when the complaint case was dismissed for non-prosecution.

8. The litigant should not be made to suffer for the lapse/bonafide mistake on the part of the counsel. Hence, the order dated 10.01.2014 passed in the complaint case bearing CC No.202/1 is set aside. The Complaint Case is restored to its original number.

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9. The parties are directed to appear before the learned Trial Court on 30th May, 2016.

10. Appeal stands allowed.

11. A copy of this order be sent to the learned Trial Court for information and compliance.

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


PRATIBHA RANI, J.

APRIL 28, 2016

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