

\$~7.

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

+ CRL.A. 599/2016

RAMESH P SHAH

..... Appellant

Through: Mr. Aditya Jain, Advocate

versus

SAWAN KAPOOR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

22.07.2016

%

None appears for the respondent when the appeal is called up for hearing. Accordingly, the appeal is taken up for hearing.

The present appeal is directed against the order dated 11.01.2016 passed by the Learned MM (NI Act), Saket (SE) in CC No.1151/2015. The relevant facts have been taken note of in the order dated 12.07.2016 and insofar as it is relevant the same are reproduced herein below.

“The present leave petition is directed against the order dated 11.01.2016 whereby the petitioner/ complainant’s application under Section 138 of the Negotiable Instruments Act, 1881 has been dismissed on account of non-appearance of the complainant and complainant’s counsel. The learned Magistrate has recorded that the complainant has not filed the

process fee for the last two dates.

Learned counsel for the petitioner submits that on the said date the counsel reached a little late by when the complaint had been dismissed. Despite mentioning the said order was not recalled.

Learned counsel further submits that on the date of dismissal of the complaint, in view of the notification of the Negotiable Instruments (Amendment) Act, 2015, the jurisdiction did not lie with the learned MM and the matter ought to have been transferred to the concerned Court at Salem. He further submits that initially the complaint had been filed at Salem and the same had been transferred to the Court of the learned Magistrate in view of the judgment of the Supreme Court in ***Dashrath Rupsingh Rathore Vs. State of Maharashtra*** dated 01.08.2015. However, on account of the amendment of the Negotiable Instruments Act, the same was required to be re-transferred to the concerned Magistrate at Salem. For this reason, the petitioner had not taken steps for issuance of summons to the accused.”

The submission of learned counsel for the appellant is that the aforesaid tantamounts to a sufficient explanation for the non appearance of the appellant before the learned Magistrate, which led to the passing of the impugned order.

There is no opposition to the present appeal and even otherwise, I find that the aforesaid explanation offered by the appellant is sufficient to explain the non appearance before the learned Magistrate on 11.01.2016. The complaint of the appellant has not been dealt with on merits. Accordingly, the impugned order is set aside and the matter is remanded back to the learned Magistrate and the complaint stands restored to its original number.

The learned Magistrate shall pass appropriate orders in the matter.

VIPIN SANGHI, J

JULY 22, 2016

sr