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

DECIDED ON : 15th SEPTEMBER, 2016

+ **CRL.A.1658/2013**

SHRI CHAND YADAV

..... Appellant

Through : Mr.Amarjeet Sahni, Advocate.
versus

MANOJ KUMAR & ANR.

..... Respondents

Through : Ms.Tina Garg, Advocate for R1 &
R2.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J. (Oral)

Crl.M.A.13528/2014

Delay in re-filing application for substitution of legal heirs of deceased appellant is allowed.

Application stands disposed of.

Crl.M.A.13527/2014

This is an application for substitution of the legal heirs of the deceased appellant.

Application is allowed and disposed of.

Crl.A.1658/2013

1. Present appeal has been preferred by the appellant to challenge the legality and correctness of an order dated 15.01.2013 of learned Metropolitan Magistrate by which the complaint case under Section 138 Negotiable Instruments Act filed by him was dismissed and the respondents were acquitted. The appeal is contested by the respondents.

2. On perusal of the Trial Court record, it reveals that complaint case under Section 138 Negotiable Instruments Act was filed against the respondents on 24.06.2010. The respondents put appearance before the Trial Court. By an order dated 03.06.2011, notice under Section 251 Cr.P.C. was served upon them, to which they pleaded not guilty and opted to lead defence evidence. They wished to move an application under Section 145(2) of Negotiable Instruments Act. By an order dated 21.03.2012, the opportunity to cross-examine the complainant was denied due to respondents' failure to move any application under Section 145(2) Negotiable Instruments Act. Recording of 313 Cr.P.C. statement was dispensed with and the matter was listed for defence evidence for 13.04.2012. On 22.08.2012 case was adjourned for arguments. On 29.09.2012, the complainant was not present. One last and final opportunity was granted to the complainant to put appearance on 15.01.2013. On that day, learned Proxy counsel was present on behalf of the complainant. Since the complainant was not present, the complaint case was dismissed observing that the complainant was not interested to pursue the complaint.

3. On scanning the order-sheets referred above, it reveals that presence of the complainant on 15.01.2013 was not necessary for conducting

effective proceedings. On 22.08.2012, the case was adjourned for further arguments. The appellant has given cogent reasons for his absence on the date of hearing before the Trial Court. Number of documents have been placed on record showing that the appellant was suffering from various ailments and was unable to put appearance in person. It is informed that the appellant has since expired.

4. The complainant and his representative were pursuing the complaint case diligently. Only on few dates, the complainant or his attorney could not put appearance for the reasons detailed in the petition. No prejudice was caused to the respondents due to the absence of the complainant or his representative particularly when the proxy counsel had represented the complainant on the date of dismissal of the complaint case. Apparently, the impugned order has resulted in miscarriage of justice and cannot be sustained.

5. In the light of above discussion, the appeal preferred by the appellant is allowed and the order dated 15.01.2013 is set aside.

6. The parties are directed to appear before the Trial Court on 26.09.2016. The Trial Court shall proceed with the trial as per law.

7. Trial Court record be sent back forthwith with the copy of the order. Pending applications (if any) also stand disposed of.

(S.P.GARG)
JUDGE

SEPTEMBER 15, 2016 / tr