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

+ CRL.L.P. 41/2016

SEEMA

..... Petitioner

Through: Mr. Ojasvi Khaneja, Advocate.

versus

VIJEYTA HIRA

..... Respondent

Through: Mr. Navit Bansal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

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ORDER
17.10.2016

I have heard learned counsel

Leave granted.

Crl.Appeal No. 982 /2016(to be registered and numbered)

The Registry is directed to register and number the present appeal.

Admit.

With the consent of the parties, I have heard the present appeal at this stage itself.

The present appeal is directed against the order dated 15.10.2015, whereby the appellant's complaint under Section 138 of the NI Act has been dismissed for non-appearance of the complainant, and the accused stood acquitted.

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The explanation furnished by the appellant for non-appearance of the complainant and the counsel on 15.10.2015 is that the appellant had to visit ailing maternal uncle at Panipat and the counsel for the appellant got caught up in another case in another Court on the same day.

Learned counsel for the respondent submits that the impugned order records that the complainant had not been appearing for the last four dates, whereas a perusal of the Trial Court Record would show that she had not appeared on eight dates.

Learned counsel for the appellant submits that the appellant had completed her evidence and the matter was being listed for recording of evidence of the accused. Learned counsel submits that the appellant was not properly instructed by her counsel that she had to remain present on each date.

Having heard learned counsel, it is clear that the respondent accused was subjected to harassment and inconvenience on account of non-appearance of the appellant on several dates, including on 15.10.2015. At the same time, this Court is of the view that lis should be resolved on merits, and as far as possible, it should not be disposed of on technical grounds. The inconvenience suffered by the accused can be compensated by way of costs.

Learned counsel for the appellant submits that the appellant is willing to suffer adequate costs as may be ascertained by this Court.

Considering the fact that the cheque amount involved is Rs.1,30,000/- and the stage at which the case came ^{to be dismissed} on account of non-appearance of the complainant, the impugned order is set aside and the appeal is allowed subject to payment of costs of Rs.15,000/- by the appellant to the accused.

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The costs shall be paid on or before the next date before the Trial Court.
The matter is remitted back to the Trial Court.

The parties shall appear before the Trial Court on 26.11.2016. The complainant shall remain present on each and every date fixed before the Trial Court, unless her personal appearance is exempted. The Trial Court is directed to expedite disposal of the case.

The appeal stands disposed of in the aforesaid terms.



VIPIN SANGHI, J

OCTOBER 17, 2016

B.S. Rohella