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

+ CRL.L.P. 424/2016

ANURAG ARORA

..... Petitioner

Through : Mr. Surender Singh and Mr. Sanjay
Kumar, Advs.

versus

THE STATE & ANR

..... Respondents

Through : Mr. Tarang Srivastava, APP. for R-1.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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23.11.2016

Respondent no.2 has been served, however no one appears for respondent no.2 despite service. Respondent no.1 is state. Learned Additional Public Prosecutor submits that this is the complaint case filed by petitioner against respondent no.2 before trial court under Section 138 of the Negotiable Instruments Act and state has nothing to do with the matter.

Vide order dated 30th April, 2016, trial court has dismissed the complaint for non-prosecution as well as non-appearance since petitioner/complainant had remained unrepresented on that day.

Leave to appeal granted. Registry to register the petition as an appeal.

Crl.A. 1124/2016 (to be numbered)

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Heard.

Learned counsel for appellant submits that after filing of the complaint, same was diligently pursued by the appellant. On 31st October, 2015, appellant along with his counsel appeared and tendered his affidavit by way of evidence along with the documents. After hearing arguments and perusing the record, trial court took cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1887 and ordered to issue summons to the accused returnable for 27th February, 2016. On 27th February, 2016, neither appellant nor his counsel could appear in time and the matter was adjourned to 30th April, 2016. Learned counsel for appellant went to court later and noted the next date of hearing as 7th May, 2016 instead of 30th April, 2016 resulting in dismissal of complaint for non-appearance and non-prosecution. It is submitted that on 30th April, 2016, even accused/respondent no.2 had remained unrepresented. Certified copies of the order sheets have been placed on record. The plea taken by appellant is that his counsel had noted the next date of hearing as 7th May, 2016 instead of 30th April, 2016 thus, appellant remained unrepresented on 30th April, 2016. Appellant was not to gain anything by his non-appearance resulting in dismissal of the complaint, which was prejudicial to his own interest. The

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plea taken by the appellant is probable and plausible and there is no reason to disbelieve the same.

Keeping in mind the above facts and circumstances, impugned order dated 30th April, 2016 is set aside and complaint is restored to its original number, subject to however cost of ₹10,000/- to be paid by the appellant to respondent no.2. Appellant shall appear before the trial court on 8th December, 2016.

Appeal is disposed of in the above terms.


A.K. PATHAK, J.

NOVEMBER 23, 2016/dk