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

+ **CRL.L.P. 525/2016**

MOHD SHAFIQ

..... Petitioner

Through : Mr. Ghanshyam Yadav and Ms.
Monika, Advs.

versus

STATE (NCT OF DELHI) & ANR

..... Respondents

Through : Dr. M. P. Singh, APP for R-1.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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02.02.2017

CRL.L.P. 525/2016

Despite service, no one appears for the respondent no.2. Leave to appeal granted. Registry to register the petition as an appeal.

Crl.A. No.138/2017 (to be numbered)

Since a short point is involved, appeal is being disposed of after hearing the arguments of learned counsel for the appellant and learned Additional Public Prosecutor for the State.

Appellant filed a complaint under Section 138 of the Negotiable Instruments Act against the respondent no.2, before the trial court. Vide order dated 14th July, 2016, complaint has been dismissed in default and respondent no.2 has been acquitted under Section 256 Cr.P.C.

Learned counsel for the appellant submits that complaint case was transferred to the Court of Shri Dinesh Kumar, MM(T), North-East, Karkardooma Court, Delhi pursuant to a letter No.1118-30/Judl./N-E/KKD/Delhi/2016 dated 16.02.2016 of Learned District & Sessions Judge, North-East, KKD Courts, Delhi from the earlier Court. Transferee court took up the matter on 18th May, 2016 and ordered for issuance of fresh summons to respondent no.2, returnable for 25th July, 2016 on filing of PF through Speed Post within seven days,. It is submitted that appellant had noted the next date of hearing as 25th July, 2016. However, appellant's counsel was not present when the date was given and he had noted down the date. It is contended that after the date of 25th July, 2016 was given, respondent no.2 (accused) appeared in Court along with his counsel and at their request matter was fixed for 3rd June, 2016 instead of 25th July, 2016. Appellant remained under the impression that matter would be taken up on 25th July, 2016, therefore, did not appear in Court on 3rd June, 2016 and 14th July, 2016 when the matter was taken up by the Court. Though the date, that is, 3rd June, 2016 was not notified to the appellant. It is submitted that on 25th July, 2016, counsel did not find the matter in the Cause list. Accordingly, he made enquiries and came to know that matter was already dismissed in default on 14th July, 2016.

I have perused the order dated 18th May, 2016. It is clear that transferee

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court had issued summons to respondent no.2, returnable for 25th July, 2016. It appears that subsequently respondent no.2 had appeared in Court along with his counsel and at their request date was fixed as 3rd June, 2016 for appearance of appellant and further proceedings. On 18th May, 2016, counsel was not present when the matter was taken up. In such a scenario, there is every possibility that counsel had earlier noted down the date as 25th July, 2016. No court notice was issued to appellant or his counsel for their appearance on 3rd June, 2016 and on 14th July, 2016. The plea taken by the appellant that he remained unrepresented on 14th July, 2016 since next date of hearing was noted by his counsel as 25th July, 2016, is a probable plea.

It is trite to say that appellant was not going to gain any benefit from his non appearance, more so he had been earlier pursuing the matter diligently.

For the foregoing reasons, impugned order dated 14th July, 2016 is set aside. Complaint case is restored to its original number. Parties to appear before the trial court on 10th March, 2017.

Appeal is disposed of in the above terms.

FEBRUARY 02, 2017/dk


A.K. PATHAK, J.