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

+ **CRL.L.P. 531/2016**

MOHD ISRAIL

..... Petitioner

Represented by: Mr. Rakesh Mukhija, Adv.

versus

STATE & ANR

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

12.02.2018

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Despite service none appears on behalf of the respondent No.2.

Having perused the order sheets of the learned Trial Court leave to appeal is granted to the petitioner.

Petition is disposed of.

CRL.A. 19/ /2018 (Registry to number the appeal)

Admit.

Aggrieved by the order dated 27th February, 2016 dismissing the complaint for want of prosecution and in default, the petitioner had preferred the leave to appeal petition whereon this appeal has been registered.

The petitioner preferred complaint case No.3966/2015 titled as 'Mohd. Israil Vs. Manish Rai' under Section 138 of the Negotiable
CRL.L.P. 531/2016.

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Instruments Act. The allegation of the petitioner in the complaint was that the respondent No.2 in discharge of his liability issued two cheques for a sum of ₹50,000/- and ₹91,800/- respectively drawn on HDFC Bank, Kapashera, Delhi which on presentation were returned with the remarks "Funds Insufficient and Payment stopped by drawer". Despite a legal notice being issued to the respondent No.2 no reply was forthcoming nor was the liability discharged, hence the petitioner filed the complaint.

The said complaint came up on 5th May, 2015 when pre-summoning evidence of the complainant was recorded and the learned Trial Court took cognizance of the offence and summons were issued to the respondent No.2. On 26th May, 2015 the next date learned Trial Court noted that the parties wanted to settle the complaint and referred the matter to Mediation Centre, Dwarka Courts. Learned Trial Court also noted that as per the settlement, the accused undertook to pay a sum of ₹ 1,35,000/- to the complainant in six instalments, where after the petitioner/ complainant sought withdrawal of the cases. Statement of both the complainant and accused were recorded in this regard.

Matter was listed for payment of the first instalment on 23rd June, 2016 when the petitioner along with his counsel was present. On a plea of territorial jurisdiction the learned Trial Court fixed the matter for 10th July, 2015 by which date the complainant filed the affidavit disclosing the particulars of his bank account. The matter was thereafter listed for 30th July, 2015 when again complainant was present in person. Learned Trial Court transferred the case from Central District, Tis Hazari Courts to South West District, Dwarka Courts. In view of the amendment that took place the

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matter was again listed before the learned Metropolitan Magistrate, Central District on 7th September, 2015 and 19th November, 2015 when complainant was present but accused not being present non-bailable warrants were issued. The next date fixed before the Trial Court was 27th February, 2016 which date was inadvertently wrongly noted by the learned counsel as is evident from the copy of the diary of the learned counsel. Hence on 27th February, 2016 after giving a pass-over the learned Trial Court dismissed the complaint due to non-presence of complainant or his counsel.

For the explanation rendered by the learned counsel based on the affidavit and a copy of the diary of the counsel being enclosed therewith, this Court deems it fit to restore the complaint to its original position.

The order dated 27th February, 2016 dismissing the complaint for want of prosecution is set aside. Complaint is restored to its original position and the same be listed before the learned Metropolitan Magistrate i.e. successor Court of Ms. Neha Gupta Singh on 7th March, 2018 subject to a cost of ₹10,000/- to be deposited by the petitioner with the Delhi High Court Legal Services Committee within two weeks. Proof of cost be shown to the learned Trial Court.

Appeal is accordingly disposed of. Order dasti.


MUKTA GUPTA, J.

FEBRUARY 12, 2018
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