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

+ **CRL.M.C. 1551/2017**

RAJ PAL

..... Petitioner

Through: Mr. Romy Chacko and Mr. Rahat
Bansal, Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. G.M. Farooqui, APP for State.
Mr. Neeraj Kumar Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **08.03.2018**

Petitioner filed a complaint under Section 200 Cr.P.C. against the respondent nos. 2 to 7 which has been dismissed for non-prosecution by the learned Metropolitan Magistrate vide order dated 3rd December, 2016. It is submitted that matter was listed on 19th May, 2016 for pre-summoning evidence. However, counsel for the petitioner was not available that day therefore petitioner (complainant) appeared in Court and sought adjournment. Matter was adjourned to 3rd December, 2016 but petitioner, who is an illiterate, inadvertently informed the next date of hearing to his counsel as 3rd February, 2017. Accordingly, counsel noted the next date of hearing as 3rd February, 2017. Due to this confusion, neither the petitioner nor his counsel could appear in court on 19th May, 2016.

Learned counsel for the respondent no.2 has opposed this petition. It

is contended that petitioner was present in Court on 19th May, 2016. As per his own version, petitioner had heard the next date of hearing correctly, that is, 3rd December, 2016. It is difficult to fathom that he would have informed his counsel a wrong date only because he is an illiterate person. It is submitted that no sufficient cause has been furnished for non appearance of the petitioner and his counsel in Court on 3rd December, 2016.

It is trite law that effort has to be made to decide the case on merits instead of dismissing it on technicalities. Petitioner had been pursuing the complaint before the trial court on the earlier dates. Petitioner cannot be made to suffer because of single lapse of non-appearance on 3rd December, 2016. Complaint was at the pre-summoning stage.

For the foregoing reasons, the impugned order is set aside and complaint is restored at its original number, subject to however, costs of ₹10,000/- to be paid by the petitioner to respondent no.2

Petitioner shall appear before the trial court on 2nd May, 2018. Thereafter trial court shall proceed in the matter in accordance with law.

Petition is disposed of in the above terms.

A.K. PATHAK, J.

MARCH 08, 2018/ga