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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 3743/2017**

M/S BANSAL CREDITS LIMITED Petitioner
Through Ms. Anjana Joshi, Adv.

Versus

RISHI PAL Respondent
Through Mr. Pankaj Srivastav and Mr. Raj
Kumar Diwan, Adv.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

% **ORDER**
12.09.2018

CRL.M.C. 3743/2017

On the oral prayer made by learned counsel for the petitioner, present petition is treated as Leave To Appeal Petition under Section 378(4) of the Code of Criminal Procedure, 1973. Registry to register this petition as petition seeking Leave To Appeal.

Crl. L.P. No. (to be registered and numbered)

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

Crl. A. No. (to be registered and numbered)

Appellant filed a complaint under Section 138 of the Negotiable

Instruments Act, 1881 (“the Act”, for short) against the respondent before the trial court. After the petitioner led pre-summoning evidence, respondent was summoned as an accused.

Respondent appeared in the trial court and furnished bail bond. However, subsequently complaint was dismissed in default on 24th April, 2017 as appellant had remained unrepresented in Court on two consecutive dates and respondent was acquitted.

Learned counsel for the appellant submits that appellant had filed two complaint cases; one was against the respondent and other was against one Azihuddin. Both the cases were listed on 14th October, 2016. Inadvertently, on 14th October, 2016 Authorized Representative of appellant wrongly noted the next date of hearing in the trial case as 2nd May, 2017; instead of 28th January, 2017. Consequently, neither the Authorized Representative nor counsel could appear on 28th January, 2017 and thereafter on 24th April, 2017, when the case was taken up by the trial court. Appellant’s counsel made inquiries since matter was not shown in the cause list, when he came to know that case was dismissed in default on 24th April, 2017.

Appellant has placed on record photocopies of relevant pages of diary maintained by the learned counsel, that is, dated 14th October, 2016, 24th

April, 2017 and 2nd May, 2017. A perusal thereof shows that case titled M/s. Bansal Credits Limited vs. Rishi Pal is shown in the diary on 14th October, 2016 and thereafter, on 2nd May, 2017. The case does not find mentioned on 24th April, 2017, in the case diary.

Plea taken by the appellant that wrong date was noted in diary is a probable plea. There is no reason to disbelieve the contentions of appellant, more so, when same have been corroborated from the case diary maintained by the learned counsel. As regards plea of delay taken by the learned counsel for respondent is concerned, appellant can be saddled with costs.

For the forgoing reasons, the impugned order is set aside and complaint case is restored at its original number, subject to appellant depositing ₹15,000/- with the Kerala Chief Minister's Distress Relief Fund within one week. Receipt be produced before the trial court on the next date of hearing.

Parties shall appear before the trial court on 9th October, 2018. Appeal is disposed of in the above terms.

A.K. PATHAK, J.

SEPTEMBER 12, 2018
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