

\$~8

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

+ CRL.M.C. 849/2018

M/S PARTAP COMMERCIAL CO.

..... Petitioner

Through: Mr. Akshay Bhatia, Mr. Vivek Singh
& Mr. Avinash Das, Advocates.

versus

M/S ZAHOOR GARMENTS & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

%

11.02.2019

The petitioner had instituted criminal complaint case (CC no. 767/2017) alleging offence under Section 138, Negotiable Instruments Act, 1881 (NI Act) impleading the respondent as accused person. On the basis of preliminary inquiry, the Metropolitan Magistrate, having taken cognizance, issued process against the respondents. The documents on record confirm that second respondent had entered appearance through counsel, he also representing the first respondent, it being the proprietor thereof. The case was at the stage of evidence, after the service of notice under Section 251 of the Code of Criminal Procedure, 1973 (Cr.P.C.) on 07.11.2016, the plea of the respondents having been recorded. The complaint case, however, came to be dismissed, by order dated 25.11.2017, for non-appearance of the petitioner as the complainant.

The present petition seeks re-call of the above-mentioned order of the Metropolitan Magistrate, it being explained that the on account of abolition of the concerned criminal court, the case had moved from the court where it was pending to another court, some confusion having prevailed in the wake of such development, wrong date having been noted.

The respondents, upon being served, entered appearance on 17.07.2018. However, no reply has been filed by them in answer to the petition. When the matter is called out, there is no appearance on behalf of the respondents. It is clear, the petition is not contested.

Given the above explanation, the impugned order dated 25.11.2017 whereby the complaint case of the petitioner was dismissed in default directing acquittal of the respondents is hereby set aside. The complaint case is restored on the file of the concerned Metropolitan Magistrate where it shall be taken up for further proceedings on 7th March, 2019.

Given the non-appearance of the respondents, it will be appropriate in the event of there being no appearance on their behalf before the trial court on the date as fixed as above, court notices shall be issued and served on them before the case is taken up further.

The petition is disposed of in above terms.

R.K.GAUBA, J.

FEBRUARY 11, 2019

nk