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

+ CRL.M.C. 3405/2018

ANAND KUMAR

..... Petitioner

Through: Mr. Arun Kumar Kaushik, Adv.

versus

RAJ KUMAR @ RAJU

..... Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE R.K.GAUBA****ORDER**

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22.01.2019

The complaint case (no. 613759/2016) of the petitioner directed against the respondent herein was dismissed for non-appearance and non-prosecution by order dated 27.02.2018 of the Metropolitan Magistrate. The case, it is submitted, was still at the stage of pre-summoning inquiry, there being no occasion for the respondent to be present or to be "acquitted". The petitioner challenged the said order in the court of Sessions invoking its revisional jurisdiction by presenting petition (C.R. No. 372/2018), but under some legal advice the said petition was withdrawn and dismissed by order dated 23.05.2018.

The petitioner has approached this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) read with Article 227 of the Constitution of India to submit that he has been rendered remediless.

The observations of the Metropolitan Magistrate in the order dated 27.02.2018 to the effect that the accused stood "acquitted" apparently were

uncalled for, unnecessary and wholly unjustified. The criminal complaint was still at the threshold, no summoning order having been passed and even in the pre-summoning inquiry no evidence having been adduced. The petitioner's counsel is right in submitting that the assumption that the criminal leave petition under Section 378 (4) Cr.P.C. against judgment of acquittal would be an appropriate remedy was incorrect and on account of wrong legal advice, the revision petition which had been correctly presented was erroneously withdrawn.

The order dated 23.05.2018 of the revisional court in C.R. No. 372/2018 is vacated. The said revision petition is restored and revived on the file of the concerned court of sessions which shall consider the same, of course, after issuing notice to the respondent and hearing both sides.

The petitioner shall appear before the revisional court on 19th February, 2019.

With these directions, the petition and the application filed therewith are disposed of.

R.K.GAUBA, J

JANUARY 22, 2019

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