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

+ CRL.M.C. 4316/2017

MASROOR ALI KHAN ..... Petitioner  
Through Mr. M. K. Singh, Adv.  
versus

QAYAM SAFI @ SIKANDER ..... Respondent  
Through None

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**ORDER**

% **11.10.2019**

Vide the present petition, the petitioner seeks setting aside of order dated 16.01.2017 passed by the Ld. District & Session Judge and also restore the Complaint Case no. 11572/16 and consequently the Ld. Trial Court may be directed to proceed with the Complaint case for the further proceedings.

Case of the petitioner is that on 19.10.2016, the petitioner/complainant could not appear before the Ld. court of M.M. as he was ill due to high fever and counsel in the matter was also not available and he requested another Advocate to attend the case on his behalf but somehow he could not attend the hearing and as such the complaint was dismissed for want of prosecution.

Thereafter, the petitioner preferred the Revision Petition U/s 397 of Cr.P.C., however the same was dismissed vide order dated 16.01.2017 by holding the view that the Order dated 19.10.2016 passed by Ld. Trial court amounts to acquittal as per the provision of Sec.256 of Cr.P.C. Thus, the

said Court has no jurisdiction to entertain the said application.

Learned counsel appearing on behalf of petitioner submits that there cannot be an acquittal of the accused when the accused has never appeared and submitted before the Trial Court, no notice was ever framed as per provision of Sec.251 of Cr.P.C. and the trial was yet to begin and accordingly the filing of Revision under the provision of Sec.397 of Cr.P.C. was appropriate and maintainable remedy.

He further submits that Ld. District & Session Court while passing the impugned order has wrongly understood the pre-summoning evidence as evidence of the complainant in trial proceedings. Because the complainant has repeatedly complied the filing of P.P. /RC and even the last order prior to the dismissal order was complied as such giving the finding by Ld. trial court that the complainant is not interested in pursuing the matter was not proper. However, the Ld. district & session court failed to consider the same due to assumption of dismissal of complaint as an acquittal of the accused.

Learned counsel at bar stated that in complaint case appearance of the complainant is not necessary and has relied upon in the case of ***Gurpreet Singh Vs. M/s. Ranbaxy Laboratories Ltd. & Anr. 2010, VI AD (DELHI) 485***, whereby this Court observed that the learned MM went wrong in posting the case repeatedly for complainant's evidence, without asking the accused/petitioner as to what was his defence. Since the Trial Court committed a grave error in treating case as a summon trial case, the order of learned MM suffered from jurisdictional error and was liable to be set aside.

The stage of the evidence of the complainant has not commenced in the present case. Even the accused has not been served by the complainant. Moreover, none appeared on behalf of petitioner on three consecutive dates

as observed by the Trial Court.

If, in a complaint case, the complainant preferred not to appear or none appeared on his behalf, the Court has no option but to dismiss the complaint.

In the present case, the complaint filed by the petitioner was dismissed on the ground that complainant did not appear on three consecutive dates. Thus, I find no ground to allow the present petition and the same is accordingly dismissed.

**SURESH KUMAR KAIT, J**

**OCTOBER 11, 2019**

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