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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 2357/2019**
DINESH KUMAR SHUKLA & ORS. Petitioners
Through: Mr. Sanjiv Kumar, Adv.

versus

STATE & ANR Respondents
Through: Ms. Meenakshi Dahiya, APP for State
with SI Manoj Chahar, PS Paschim
Vihar.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **03.02.2020**

In terms of proceedings dated 28.07.2019, the TCR has been received i.e. the TCR in relation to CC No.77/03.

The petitioners vide the present petition seek the setting aside of the order dated 09.01.2018 in CC No.77/03, PS Paschim Vihar of the learned MM-03, THC (West) and also seek the setting aside of the order dated 11.04.2018 in Crl. Revision No.76/2018 of the learned ASJ-FTC, West, THC which had dismissed the Revision Petition against the order dated 09.01.2018 of the learned MM-03, THC, West.

Vide order dated 09.01.2018, the complaint filed by the petitioner herein i.e. CC No.77/03 was dismissed in default for non-prosecution, it having been observed to the effect that there had been no appearance on behalf of the complainant despite the matter having been taken up three times on that date as also indicated through the

order sheet with it also having been observed that the complainant was also not present on the last date of hearing i.e. the date of hearing prior to the date 09.01.2018 and it appeared that the complainant was not interested in pursuing the complaint.

The proceedings of the date 12.12.2017 of the learned MM-03, THC (West) indicate that there was none present on behalf of the complainant with the matter having been renotified for 09.01.2018.

It is the avowed contention of the petitioner that the matter was fixed for 12.12.2017 at 12:30 pm and was taken up earlier and the same however not being reflected through proceedings dated 12.12.2017, thus the said contention cannot be accepted. However, the other contention raised on behalf of the petitioners is to the effect that on the date 12.12.2017, the matter had been adjourned to the date 02.02.2018 and there was a change of the date of hearing to 09.01.2018 in as much as the petitioners had noted the date of hearing as being 02.02.2018, they could not put in appearance on the date 09.01.2018. The learned Revisional Court had not accepted the said contention observing to the effect that the said submission was contrary to the record and no authenticity could be attached to the noting on the index of the judicial record and that there was thus no infirmity in the impugned order dated 09.01.2018 of the learned trial Court dismissing the complaint for non-prosecution.

It was, in the said circumstances, that the trial Court Record was directed to be requisitioned, which has since been requisitioned and perused. The copy of the file cover of the records in relation to the CC NO.77/2003 (new No.CC7871/2017) is directed to be placed

on record. A perusal of the same indicates that there is a specific noting giving the date of hearing to be 02.02.2018, which has been mentioned twice on the said file cover. In the circumstances, in the interest of justice, the complaint CC No.7871/2017 is directed to be restored to its original stage and number and the trial Court record be returned to the learned trial Court with the petitioners directed to appear before the learned trial Court on the date 24.02.2020 at 2:30 pm with directions to the learned trial Court to proceed further in accordance with law.

The petition is disposed of.

ANU MALHOTRA, J

FEBRUARY 03, 2020

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