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

+ CRL.M.C. 4147/2018

NAVEEN JINDAL

..... Petitioner

Through: Mr. Vaibhav Sharma, Advocate

Versus

PAWAN KUMAR PASSI

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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30.01.2020

CRL.M.A. 2080/2020 (exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.A. 2079/2020 (CM for restoration)

1. The present application has been filed seeking restoration of the petition which was dismissed for non-prosecution on 16.01.2020.
2. I have heard learned counsel for the petitioner and have also gone through the case records.
3. The present petition was instituted against the impugned order dated 03.04.2018 vide which Sessions Court dismissed the Criminal Revision Petition No.9/18 filed by the petitioner against the order dated 18.11.2017 passed by the Metropolitan Magistrate.

4. Briefly, the facts necessary to decide the present application are that the petitioner was the complainant before the Court of Metropolitan Magistrate in a complaint case bearing C.C. No.874/2013 (earlier C.C. No.161/2009). The aforesaid complaint case was filed in the year 2009. On 07.04.2016, the complainant made a statement before the trial court that the matter had been settled amicably and he was willing to withdraw the aforesaid complaint. At his request, the matter was renotified for 30.04.2006, on which date, it was again renotified. On the next date, i.e., 06.05.2016, both the parties were present before the trial court and sought time to move a quashing petition before the High Court.

5. On 06.08.2016, the complainant remained absent before the trial court and cost of Rs.2,000/- was imposed on him. The complainant remained absent even on the next date, i.e., 15.11.2016 and subject to payment of further cost of Rs.5,000/-, last and final opportunity was granted for the complainant's appearance. On 20.04.2017, once again, the complainant remained absent and the trial court noting the previous conduct of the complainant granted one more opportunity subject to payment of further cost of Rs.5,000/-. On 05.08.2017, the trial court issued court notice to the complainant for appearance and to prosecute the matter and renotified the matter for 18.11.2017. However, the complainant remained absent even on the next date and while recording that the complainant had remained absent despite being served with the court notice, the trial court dismissed the complaint case for non-prosecution and the accused was acquitted. It is relevant that in all these proceedings, the accused remained present.

6. The aforesaid order was challenged before the Sessions Court and noting that the complainant did not appear for five consecutive dates despite being served with the court notice, the order of dismissal was upheld.

7. In the present petition, the petitioner was granted an opportunity to file rejoinder on 17.09.2019. The petitioner neither filed rejoinder nor appeared on the next date, i.e. 16.01.2020, when the petition was dismissed for non-prosecution.

8. In view of the continued absence of the petitioner before the Trial Court, I am not inclined to allow the present application. The same is accordingly dismissed.

MANOJ KUMAR OHRI, J

JANUARY 30, 2020

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