



2023:DHC:7343



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

% Judgment delivered on: 27.09.2023

+ **CRL.L.P. 90/2023****MONA GOSWAMI**

..... Petitioner

versus

DALIP BHASIN

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Shiv Chopra, Ms. Aadhyaa Khanna
and Mr. Siddharth Arora, Advocate

For the Respondent : Mr. Lokesh Nath Jha, Advocate

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]****CRL.M.A. 4070/2023**

1. This is an application seeking condonation of 45 days' delay in filing the appeal.
2. For the reasons stated therein, the delay is condoned.
3. The application stands disposed of.

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4. This is a leave petition to appeal under Section 378 Cr.P.C., 1973



on behalf of leave-petitioner against the order dated 22.10.2022 passed by the Court of learned MM-01 (NI Act), Central, Tis Hazari Courts, Delhi in Complaint Case No.13114/2017 titled as ***Mona Goswami vs. Dalip Bhasin***, whereby the complaint of the leave-petitioner was dismissed for non-prosecution and non-appearance.

5. In short, the case of the leave-petitioner in regard to the present dispute is that during the pendency of the complaint, the respondent was found absconding and therefore the matter was consigned to the Record Room with liberty granted to the petitioner to seek revival as and when the respondent is arrested.

6. It is further stated that the respondent was subsequently arrested and the matter was revived and the leave-petitioner/complainant had started participating in the proceedings. Subsequently, the matter was referred to mediation for the purpose of settlement talks between the parties. It is also submitted that the settlement talks had failed and therefore the matter was referred back to the Court.

7. Learned counsel submits that this fact of the matter that the case was referred back from the Mediation Centre to the concerned Trial Court for further proceedings was not in the knowledge of the leave-petitioner nor did the counsel for the leave-petitioner inform the leave-petitioner about such proceedings. On this fact, learned counsel submits that the leave-petitioner had not pursued the matter and which resulted in the impugned order being passed in the complaint case.

8. Learned counsel submits that the said non-appearance was not willful and prays that the leave-petition and the appeal be allowed.

9. Mr. Lokesh Nath Jha, learned counsel appears for the respondent



and submits that the aforesaid submissions made on behalf of the leave-petitioner are incorrect on facts.

10. According to learned counsel for the respondent, the leave-petitioner had participated in the mediation proceedings and once it was revealed that the cheque in question was issued to Mr. Sanjeev Malhotra, son-in-law of the leave-petitioner and not in the name of the leave-petitioner, the settlement talks failed. Thereafter, knowing that the outcome of the criminal proceedings will also not be fruitful, the leave-petitioner had actually stopped participating in the criminal case.

11. Learned counsel for the respondent submits that in such circumstances, the learned Trial Court was constrained to pass the order dismissing the present complaint for non-prosecution as also for non-appearance.

12. This Court has considered the arguments of learned counsel for the parties.

13. Without going into the merits of the matter as raised and objected by Mr. Jha, this Court is of the considered opinion that the dismissal of the complaint was on a technical issue of non-appearance and non-prosecution, which can be set aside by adequately compensating the respondent in that regard. It is trite that matters should be heard on merits and decided as such rather than on technicalities.

14. Keeping in view the aforesaid consideration, this Court is of the considered opinion to allow the leave petition.

CRL.A...../2023 (to be numbered)

15. Accordingly, in view of the above observations and conclusions arrived at, the appeal is allowed and the impugned order dated



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22.10.2022 passed in Complaint Case No.13114/2017 titled ***Mona Goswami vs. Dalip Bhasin***, dismissing the said complaint for non-prosecution and non-appearance is set aside, subject however, to cost of Rs.10,000/- to be paid by the appellant to the respondent.

16. As a sequitur, the case title ***Mona Goswami vs. Dalip Bhasin*** and the Criminal Complaint Case No. 13114/2017 is reinstated to its original position, as before.

17. The parties are directed to appear before the concerned learned Trial Court on 18.10.2023, who shall accommodate the parties, thereafter, as per its own convenience.

18. With the aforesaid, the petition stands disposed of.

TUSHAR RAO GEDELA, J.

SEPTEMBER 27, 2023

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