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

% *Date of decision: July 27, 2023*

+ **CRL.L.P. 368/2023 & CRL.M.A. 19595/2023**

JANHAVI DEOSKAR

..... Petitioner

Through: Mr. Gaurav Puri, Mr. Sarthak Gupta and Mr. Saksham Thareja, Advocates.

versus

STATE & ORS.

..... Respondents

Through: Ms. Manjeet Arya, APP for the State.

Respondent no. 2 along with counsel (appearance not given).

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

CRL.M.A. 19667/2023 (Condonation of Delay)

1. The present application is filed under section 5 of the Limitation Act, 1963 for condonation of delay of 252 days in filing the present application for leave to appeal.
2. The counsel appearing on behalf of the petitioner stated that due to his own fault, the present appeal/leave to appeal could not be filed within the period of limitation.
3. After considering all facts as stated in the application and in the interest of justice, the delay in filing of the present appeal/leave to appeal is hereby condoned.
4. The application stands disposed of.

CRL.L.P.368/2023 & CRL.M.A. 19668/2023

5. The present application for leave to appeal is filed under section



378(4) Cr.P.C to impugn the order dated 24.08.2022 passed by the Court of Ms. Aditi Rao, M.M. (NI Act) South East District, Saket Courts, New Delhi.

6. The petitioner filed a complaint under section 138 read with section 142 of the Negotiable Instruments Act, 1881 titled as **Janhavi Deoskar V Beryl Springs Infrastructure Pvt. Ltd. & Ors.** bearing Complaint Case no. 629195/2016 which was ordered to be dismissed due to the non-appearance of the complainant vide the impugned order dated 24.08.2022. The impugned order dated 24.08.2022 reads as under:-

None has appeared on behalf of complainant.

Perusal of the record reveals that the complainant has not been appearing since last four dates of hearing. Even today, despite repeated calls, none has appeared on behalf of the complainant.

It appears to the court that complainant is not interested in pursuing the matter further. No purpose would be served if the matter remains pending on the board. The court deems it fit to dispose of the matter as dismissed for non-prosecution as well as repeated non-filing of PF. Accused is acquitted. Bail bond, if any, stands cancelled and surety, if any, is discharged. Original documents be returned to the rightful claimant as per rules. File be consigned to record room as per rules.

7. The counsel for the petitioner stated that he is maintaining a digital diary and the entry regarding the date of hearings pertaining to the present complaint could not be traced in the digital diary. The non-appearance on behalf of the petitioner was neither deliberate nor intentional but due to the reasons as mentioned in the application.



8. The counsel also draw the attention towards the order dated 23.07.2019 whereby, NBW were ordered to be issued against the accused. It was observed by the concerned Trial Court that respondent/accused is trying to evade the process of law.

9. After considering all facts, the petitioner is granted leave to appeal to impugn the order dated 24.08.2022.

CRL. Appeal No. _____ (to be numbered)

10. The petitioner should be given opportunity to prosecute the complaint under section 138 NI Act. Accordingly, the appeal is allowed.

11. The impugned order is set aside and the complaint bearing no.629195/2016 is restored to its original number before the Trial Court. However, the appellant/complainant is burdened with a cost of Rs.10,000/- to be deposited in to the Armed Forces Battle Casualties Welfare Fund, Canara Bank, A/c No. 90552010165915 within 15 days from today and the receipt thereof be placed on record within 07 days thereafter.

12. The appellant is directed to appear before the Trial Court on 16.08.2023 at 02:00PM.

13. A copy of this order be sent to the concerned Trial Court for necessary information.

(DR. SUDHIR KUMAR JAIN)
JUDGE

JULY 27, 2023

sk/am