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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 229/2019**

M/S. INDIAN AIRLINES LTD.Appellant

Through: Mr. Dhanesh Relan, Adv.
through V.C.

versus

M/S. RAO TOURS & TRAVELS PVT. LTD. & ORS.
.....Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
02.09.2024

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CRL.M.A. 6419/2019 *(for condonation of 34 days delay in filing the petition).*

1. For the reasons stated in the application, the same is allowed and the delay of 34 days in filing the present appeal is condoned.
2. The application stands disposed of.

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3. The leave to file the Criminal Appeal is granted.
4. The petition stands disposed of.

Criminal Appeal **/2024 (to be numbered)**

5. The present appeal was filed way back in the year 2019, challenging the order dated 26.11.2018 (hereafter '**impugned order**'), passed by the learned Metropolitan Magistrate, Patiala House Courts, New Delhi, pursuant to which the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881 was dismissed and the respondent was acquitted.
 6. The learned counsel for the appellant has taken the Court through the various orders passed by the learned Trial Court.
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7. It is pointed that on 31.01.2018, the matter was listed before the learned Trial Court and on that day, the appellant's evidence was closed. The evidence was filed by the respondent and the matter was then listed for statement under Section 313 of the Code of Criminal Procedure, 1973 on 31.01.2018.

8. On 31.01.2018, the matter further proceeded and the defence evidence was closed on that day and the matter was listed for final arguments for 09.03.2018. The final arguments thereafter were heard on 01.09.2018 and the matter was listed for orders on 17.09.2018.

9. The matter was thereafter transferred to the Court of another Presiding Officer and the appellant appeared on 17.09.2018 before the new Presiding Officer. However, when none appeared for the respondent, the matter was adjourned to 05.10.2018. The order sheet further indicates that on 05.10.2018, the Presiding Officer was on leave and the matter was adjourned to 16.10.2018.

10. The learned counsel for the appellant submits that on the said day, inadvertently a wrong entry was made by the clerk of the counsel and the next date was noted as 11.01.2019. The appellant has also filed a copy of the diary of the learned counsel as Annexure P of the present appeal.

11. It appears that from 05.10.2018, upto the passing of the impugned order, the matter got listed on three occasions and as noted above since the appellant had noted the next date of hearing as 11.01.2019, none appeared on behalf of the appellant before the learned Trial Court.

12. Notice in the present appeal was issued way back on 27.03.2019. The respondent's address in the Portal of Ministry of Corporate Affairs reflects the same address as mentioned in the



memo of parties, however, the service report indicates that the respondent company is not operating from the said address.

13. The substituted service has also been carried out by the appellant by publication in The Statesman and Dainik Jagran.

14. Today also, none appeared for the appellant. This Court does not consider it apposite to wait for the appearance of the respondent any further.

15. As noted above, it is apparent that the non-appearance of the appellant was *bona fide*. The impugned order dated 26.11.2018 is, therefore, set aside and the complaint is restored to its original number.

16. The learned Trial Court is directed to proceed further with the complaint after giving notice to the respondent.

17. The present appeal is allowed in the aforesaid terms.

18. The parties are directed to appear before the concerned learned Trial Court on 17.09.2024.

19. A copy of this order be also sent to the learned Trial Court for necessary compliance.

AMIT MAHAJAN, J

SEPTEMBER 2, 2024

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