



\$~4

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

+ **CRL.L.P. 287/2023**

NORTH EASTERN CARRYING CORPORATION LTD....Petitioner

Through: **Mr. Hrishabh Tiwari, Advocate**
(through VC).

versus

RAJESH SHARMA AND ANR

..... Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

02.05.2024

%

CRL.M.A. 34362/2023 (Delay 247 days)

1. The present application under Section 5 of the Limitation Act, 1963, seeks the following prayers:

“a) Allow this application and condone the delay of 247 days in filing the Appeal.

b) Pass any other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. Learned counsel for the applicant/petitioner submits that by way of the captioned petition under Section 378(4) of the Code of Criminal Procedure, 1973 (for short, ‘CrPC’), latter seeks leave to appeal against the impugned order dated 10.06.2022 in CC No. 527728/2016, passed by the learned Metropolitan Magistrate whereby, the respondents have been acquitted.

3. The complaint in the present case was filed, on 02.01.2008, by the petitioner against the respondents wherein, respondent no.1 has been arrayed



as an accused being a director in the firm/respondent no. 2. However, the learned Trial Court has dismissed the complaint filed by the petitioner for non-prosecution of the same and has acquitted the respondents for the offences punishable under Sections 138 read with 142 of the NI Act.

4. At the very outset, without going into the merits of the case, it is pertinent to note that the captioned petition has been filed by the petitioner after a delay of 247 days from the date of the impugned order.

5. Learned counsel for the applicant/petitioner has raised the following contentions:

i) During the said period all law offices were nonfunctional and the counsel engaged by the applicant was not able to keep the record of the next date of hearing.

ii) The delay caused in filing the captioned petition was neither intentional nor deliberate and same was on account of a *bona fide* mistake which had transpired due to non-functioning of the Courts during the Covid period.

iii) It is the case of the applicant that in April 2023, the latter got to know about the status of the present case, however, by that time the complaint filed by the applicant was dismissed in default by the learned Trial Court for non-filing of process fee.

6. After perusing the records, this Court is of the opinion that the applicant has neither provided any specific details on account of which the delay had occurred nor any cogent and satisfactory reasons have been provided by the applicant for filing the captioned petition after a lapse of 247 days.



7. It is a matter of record that on 20.01.2018, learned Trial Court had issued summons to the respondents/accused on the steps being taken by the petitioner within 30 days of the passing of the said order. However, summons could not be issued to the respondents/accused due to the non-payment of process fee by the petitioner. The learned Trial Court *vide* orders dated 26.10.2018, 17.10.2019, 26.02.2020, 30.01.2021, 29.10.2021, 29.1.2022, had granted opportunities to the petitioner to take necessary steps for issuance of summons to the respondents.

8. Perusal of the record shows that no steps were taken by the present petitioner despite several opportunities being granted by the learned Trial Court, as noted hereinabove, for the filing of process fee. Moreover, on 26.02.2020, the learned Trial Court had granted last and final opportunity to the petitioner for taking steps subject to the deposition of cost of Rs. 1,000/- with DLSA. It seems that even after imposition of cost on the petitioner, the latter did not take any steps to file the process fee.

9. Perusal of the record shows that the petitioner was not interested in pursuing the aforesaid complaint as the same can be seen from the aforesaid conduct. Therefore, no ground has been made out to interfere with the order passed by the learned Trial Court.

10. In totality of the facts and circumstances of the case, the present application is dismissed as no satisfactory explanation has been provided by the applicant for filing of the captioned petition after a delay of 247 days.

11. The application is disposed of accordingly.



CRL.L.P. 287/2023

12. In view of the aforesaid, the petition is dismissed.
13. Pending applications, if any, also stand disposed of accordingly.

AMIT SHARMA, J

MAY 02, 2024/sn

[Click here to check corrigendum, if any](#)