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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 06.03.2024*

+ CRL.L.P. 389/2022
MANJEET SINGH

..... Petitioner

Through: Mr. Amarjeet Singh Sahni and
Ms. Vanshita, Advocates.

versus

MANOJ KUMAR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

% **J U D G M E N T**

ANOOP KUMAR MENDIRATTA, J (ORAL)

None appears on behalf of the respondent despite service.

CRL.M.A. 15451/2022

Considering the facts and circumstances and for the reasons stated in the application, the delay of 86 days in filing the appeal is condoned.

Application stands disposed of.

CRL.L.P. 389/2022

Leave granted.

Criminal Leave Petition be registered as Criminal Appeal.

CRL.A...../2024 (to be numbered)

1. In brief, CRL.L.P. has been preferred on behalf of the appellant challenging order dated 15.11.2021 passed by learned MM-05, N.I. Act, New Delhi District, Patiala House Courts, New Delhi, whereby, the complaint filed on behalf of the appellant was dismissed for non-prosecution as well as in default.



2. In brief, as per case of appellant, a complaint under Section 138 of N.I. Act was preferred on behalf of the appellant (complainant before learned Trial Court), in which, during the course of proceedings, a settlement was reached between the parties on 14.09.2016. The respondent thereby agreed to pay a total sum of Rs. 3,48,000/- in installments w.e.f. 05.10.2016 to 05.03.2018. Out of settled amount, respondent paid only an amount of Rs. 1,00,000/-, but failed to make the balance payment as scheduled.

3. It is further the case of appellant that vide impugned order, learned MM dismissed the complaint on account of non-appearance of the complainant without considering the fact that the case was fixed only for the purpose of making of payment on behalf of the respondent. It is also submitted that earlier, the coercive process had been issued against the respondent, since he failed to appear and honour the settlement. Further the non-appearance of appellant on earlier two dates is stated to be on account of Covid pandemic.

4. This Court is of the considered opinion that learned MM ought to have considered that the matter was merely pending for the purpose of compliance of settlement and payment of installments by the respondent. As such, the presence of complainant could have been exempted on the aforesaid date. There is nothing on record to reflect that complainant / appellant had been trying to protract the proceedings unnecessarily or with any ulterior motive.

Considering the facts and circumstances, impugned order dated 15.11.2021 passed by learned Trial Court dismissing the complaint on account of non-prosecution is set aside. Complaint proceedings are further restored to its original number and are directed to be listed before learned Trial Court on 21.03.2024. Learned Trial Court shall proceed with the matter



from the stage at which the proceedings were pending. Appellant/complainant is accordingly directed to appear before learned Trial Court on 21.03.2024.

Appeal is accordingly disposed of. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to learned Trial Court for information and compliance.

(ANOOP KUMAR MENDIRATTA)
JUDGE

MARCH 06, 2024/R