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

+ CRL.L.P. 166/2020

M/S INTEC CAPITAL LTD.

.....Petitioner

Through: Mr. Vipul Talwar, Advocate

versus

JASVIR KAUR

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **23.05.2025**

CRL.M.A. 3933/2020 (condonation of delay)

1. For the grounds and reasons stated in the application, the delay of 47 days in filing-filing the appeal is condoned
2. Accordingly, the application is disposed of.

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3. The present appeal filed under Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 378 of the Code of Criminal Procedure, 1973) assails order dated 9th October, 2019 passed by the Metropolitan Magistrate, South East District, Saket Courts in Complaint Case No. 627550/2016 titled as *M/s Intec Capital Limited v. Jasvir Kaur*. By the said order, Appellant's complaint under Section 138 of the Negotiable Instruments Act, 1881 was dismissed in default for non-appearance and for non-prosecution. Since the impugned order has the effect of an acquittal, hence, the present appeal.



4. Counsel for the Appellant contends that on 31st August, 2018, fresh summons were issued to the Respondent as an accused, returnable on 18th January, 2019. On that date, proceedings could not take place as the Presiding Officer was on leave during the first half of the day, and the matter was adjourned to 25th July, 2019. On 25th July, 2019, the Court granted a last opportunity to the Appellant to take effective steps for service of summons, and fixed the next date as 6th October, 2019. However, as 6th October, 2019 was declared a public holiday, the matter was automatically listed on the next working day i.e. 9th October, 2019. On that day, in the absence of the Complainant and his counsel, that the matter came to be dismissed.

5. It is further submitted that due to a clerical error by the Court stenographer, the next date of hearing was wrongly noted as 6th October, 2019 instead of 6th December, 2019. Counsel in good faith believed that the matter was scheduled for 6th December, 2019. This inadvertent misunderstanding led to his absence on 9th October, 2019. Counsel clarifies that the absence was not due to a lack of interest or wilful neglect in prosecuting the matter. In support, reliance is placed on the cause list dated 25th July, 2019, which purportedly reflects 6th December, 2019 as the next date of hearing. It is further contended that the Appellant became aware of the dismissal only on 6th December, 2019.

6. The Court has considered the afore-noted facts and contentions and has perused the order sheets in Complaint Case No. 627550/2016. The impugned order reads as follows:

“CC No. 625538, 627550 and 624087/16

09.10.2019



At 10am

File taken up today as 6th, 7th and 8th October, were holidays.

*Present: None for the complainant despite several calls.
Be awaited.*

(Ashok Kumar)
MM(NI Act)-5/SED/Saket
New Delhi/09.10.2019

At 12pm

*Present: None for complainant on second occasion.
Be awaited.*

(Ashok Kumar)
MM(NI Act)-5/SED/Saket
New Delhi/09.10.2019

At 2 pm

Present: None

The matter is listed for taking steps for the further prosecution of case. However none has appeared for the complainant.

Record perused.

Perusal of the record reveals that neither the complainant nor the counsel of the complainant has taken any steps despite last opportunity vide last order dated 25.07.2019. No reason for the absence of the complainant is forthcoming.

In view of the facts and circumstances and discussion above, I am satisfied that the complainant is not interested in prosecuting his own case. Therefore, the present complaint is dismissed in default for non-appearance as well as non-prosecution. 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 after due compliance.

(Ashok Kumar)
MM(NI Act)-5/SED/Saket
New Delhi/09.10.2019

7. In view of the foregoing, this Court is satisfied that the Appellant's absence on 9th October, 2019 was not intentional but occurred due to a *bona fide* error. Thus, the impugned order, which resulted in the acquittal of the



accused, cannot be sustained.

8. Accordingly, the present appeal is allowed and order dated 9th October, 2019 is hereby set aside, and Complaint Case No. 627550/2016 is restored to its original position. The Appellant is directed to appear before the Trial Court on 8th July, 2025.

9. Copy of the order be sent to the concerned Principal District and Sessions Judge for appropriate directions.

SANJEEV NARULA, J

MAY 23, 2025/ab