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

+ **CRL.L.P. 270/2025**

YOGESH CHANDRA

.....Petitioner

Through: Siddharth Singh & Mr. Sachin
Chawla, Advocates.

versus

MANOJ KUMAR

.....Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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29.04.2025

CRL.M.A. 12810/2025 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The Application stands disposed of.

CRL.M.A.12811/2025 (Condonation of delay)

3. Application under Section 5 and 14 of Limitation Act has been filed on behalf of the Petitioner, Yogesh Chandra for condonation of delay of 623 days in re-filing the accompanying Petition.
4. For the reasons stated in the Application and in the interest of justice, the delay of 623 days in re-filing the accompanying Petition is condoned and the same is allowed.
5. The Application is disposed of accordingly.

CRL.L.P. 270/2025

6. Criminal Leave Petition under Section 419(4) read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023/under Section 378(4) read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter*



referred to as 'Cr.P.C. '), has been filed on behalf of the Petitioner, against the impugned Order dated 13.07.2023 passed by learned Metropolitan Magistrate (NI Act), Digital Court-01, South, Saket, New Delhi vide which the Complaint Case No. 3760/2021 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I. Act'), has been dismissed for non-prosecution.

7. Considering the grounds sought for seeking Leave to Appeal, the same is allowed.

CRL.A...../2025 (to be numbered)

8. Appeal under Section 419(4) B.N.S.S./Section 378(4) Cr.P.C., has been filed on behalf of the Appellant, against the impugned Order dated 13.07.2023, passed by the learned Metropolitan Magistrate (NI Act), Digital Court-01, South, Saket, New Delhi in Case No. 3760/2021 vide which the same was dismissed due to non-appearance and non-prosecution.

9. The *main ground of challenge* is that since 05.02.2022, the Complainant had not been appearing in person and it was only his counsel, who had been appearing. The learned Trial Court failed to issue a Notice to the Complainant, which was mandated according to principles of natural justice and opportunity should have been given to the Complainant to appear and justify his absence, which was not done in the present case. The dismissal of the Complaint in the absence of the Complainant, violates the fundamental principles of justice and fair trial. Arbitrarily, the Petition has been dismissed without consideration of legal requirements. The impugned Order dated 13.07.2023 is contrary to the settled law.

10. It is further submitted that due to incorrect address of the Accused, Manoj Kumar, summons could not be served and the matter remained



pending for submission of fresh address. However, the Complainant's previous counsel failed to inform him about the Court's direction resulting in repeated non-appearance and ultimately dismissal of the case in default.

11. It is submitted that the Complainant was neither wilful nor deliberate, but it was solely due to the negligence of the previous counsel, which led to the unintended non-appearance before the Court. The Complainant has a strong case and he would suffer great injustice if the Order is not set-aside. Hence, the Prayer is made for setting-aside the impugned Order dated 13.07.2023 and to restore the Complaint to its original number.

12. **Submissions heard and the record perused.**

13. The various Order Sheets of the learned Metropolitan Magistrate, reflect that on 05.02.2022, learned counsel had appeared on which he was directed to file PF/RC, which could not be filed for 27.05.2022, though, the learned counsel had appeared in person.

14. Apparently, the process was filed and the report was received on 20.07.2022 that the Summons could not be served as the address of the Accused, could not be traced.

15. The Record further shows that on 28.09.2022, the address of the Accused on Affidavit, was filed on official e-mail ID of the Court and Summons were directed to be issued. Thereafter, none appeared on 12.12.2022 and again on 17.03.2023.

16. The Petitioner claims that the matter was not being pursued diligently by the previous counsel, is incorrect. It is the responsibility and duty of the Complainant, to contact his counsel to find out the status of the case. Having engaged the counsel once, does not absolve him of any obligation to pursue his matter. No Advocate is the servant of the client, who has to chase them



for every date.

17. It has become a habit in the Court, instead of justifying the non-appearance, conveniently to blame the previous counsel without even there being any basis. This practice needs to be deprecated strongly.

18. However, the Complaint has been dismissed at the initial stage when the Summons were being directed to be issued against the Accused.

19. In the Case of Mohd. Azeem vs. A.Venkatesh & Anr., SLP (Crl.) No. 1078/2022, decided on 16.08.2022, due to the absence of the Complainant on one day fixed for trial, the learned Magistrate vide Order dated 22.06.2021, has dismissed his Complaint and acquitted the Accused. The Appeal under Section 378(4) Cr.P.C. to the High Court, was also dismissed. The Apex Court restored the Complaint and set-aside the Orders of acquittal by observing that the learned Metropolitan Magistrate had committed an error in acquitting the Accused only for absence on one day and refusing to restore the Complaint when **sufficient cause for the absence was shown by the Complainant.**

20. The impugned Order 13.07.2023 is set-aside and the Complaint is restored to its original number subject to cost of Rs.50,000/- to be paid to the Delhi Advocates' Welfare Trust.

21. The Petitioner is directed to appear before learned District and Sessions Judge, South, Saket Courts, New Delhi for marking the Case to the learned Metropolitan Magistrate on 05.05.2025.

22. The Petition is disposed of accordingly.

NEENA BANSAL KRISHNA, J

APRIL 29, 2025/RS