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

+ **CRL.L.P. 445/2019**

UPL LIMITED

.....Petitioner

Through: **Mr. Niteen Kumar Sinha, Advocate**

Versus

STATE OF NCT OF DELHI & ANR.

.....Respondent

Through: **Mr. Utkarsh, Additional Public
Prosecutor for Respondent-State**

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

24.04.2025

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CRL.L.P. 445/2019

1. The present Leave Petition under Section 378(4) Cr.P.C. has been filed by the Petitioner seeking leave to Appeal against the Judgment dated 02.07.2019 passed by the learned Metropolitan Magistrate in Criminal Case No. 2129/2018.

2. For the reasons stated, the Leave to Appeal is allowed. Appeal be registered.

3. The Petition is accordingly disposed of.

CRL. APPEAL (---- to be assigned number by the Registry)

4. The present Petition under Section 378(4) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed by the Petitioner against the Judgment dated 02.07.2019 passed by the learned Metropolitan Magistrate whereby Petitioner's Complaint under Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as "NI*

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Act”) has been dismissed for non-prosecution and non-appearance.

5. It is submitted that on 22.04.2013, the Presiding Officer got transferred and due to bulk transfer and marking of the cases, the Petitioner was unable to trace the File and was informed by the Advocate the matter was adjourned.

6. On the next date i.e. 02.07.2019, the Petitioner came to know that an adverse was passed on 22.04.2019 of imposition of cost and grant of last and final opportunity to the Authorized Representative to adduce evidence. *Vide* impugned Order dated 02.07.2019, Petitioner’s complaint case was dismissed for non-appearance.

7. In the case of Mohd. Azeem vs. A. Venkatesh & Anr., *SLP(Crl.)No. 1078 of 2002*, decided on 16.08.2002, due to the absence of the Complainant on one day fixed for trial, the Magistrate *vide* Order dated 22.6.2001 had dismissed his Complaint filed for the offence of Section 138 NI Act and acquitted the accused. The appeal under Section 378 (4) Cr.P.C. to the High Court was also dismissed *vide* the impugned Order dated 24.07.2001. The Apex Court restored the Complaint and set-aside the Orders of acquittal by observing that the learned 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.***

8. The Petitioner has hereby explained his reason for non-appearance before the Court on 02.07.2019 by submitting that there was some confusion on account of bulk transfer of the cases and the Petitioner was unable to appear on the given date for adducing his evidence.

9. In view of the above, subject to cost of Rs.10,000/- to be paid to the

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Complainant/ Respondent, the impugned Order dated 02.07.2019 is set aside and the Complaint is restored to its original number.

10. Parties are directed to appear before the learned Chief Metropolitan Magistrate on 02.05.2025, who may mark it to the competent Court, where two opportunities shall be granted to the Accused to conclude the evidence. No further opportunity shall be granted.

NEENA BANSAL KRISHNA, J

APRIL 24, 2025

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