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

+ **CRL.L.P. 39/2020**

DARSHAN LAL HANDA

.....Petitioner

Through: **Mr. Himanshu Singh, Advocate.**

versus

ABRAHAM MATHEW

.....Respondent

Through: **Mr. Gigi C. George, Mr. Sunil Kumar, Advocates.**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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24.03.2025

CRL.M.A. 535/2020 (delay of 37 days in filing leave petition)

1. For the reasons stated in the application, the delay of 37 days in filing the present appeal is condoned and the same is taken on record.
2. Application stands disposed of accordingly.

CRL.L.P. 39/2020

3. The present petition under Section 378(3) read with Section 482 of the Code of Criminal Procedure, 1973¹ seeks leave to appeal against order dated 7th September, 2019, whereby the Metropolitan Magistrate (NI Act), Saket dismissed the complaint preferred by the Petitioner for non-prosecution.
4. Since the aforementioned dismissal for non-prosecution amounts to acquittal, the Petitioner has invoked the remedy under Section 378 CrPC, seeking restoration of his complaint.



5. Leave is granted.
6. Registry is directed to re-number the present appeal.

CRL.A. /2025

7. The Appellant had preferred a complaint for the offence under Section 138 of the Negotiable Instruments Act, 1881.² The aforementioned complaint was dismissed for non-prosecution by the impugned order dated 7th September, 2019:

“CT 9970/17

Darshan Lai Handa V. Abraham Mathew

07.09.2019

Present: Proxy Counsel for complainant.

Ld. Counsel for the accused with accused.

The matter is at the stage of cross-examination. From the last 3 dates of hearing, the complainant is not appearing. On LDOH also the adjournment was granted on the ground that the complainant will be available after 12:30pm. MOA is filed by proxy Counsel for complainant today.

Proxy counsel for complainant is not aware where the SPA holder of the complainant is. In view of the same, the said matter is dismissed for non-prosecution.”

8. Counsel for the Appellant states that on 7th September, 2019, when the matter was listed for cross-examination, the Appellant could not appear before the Trial Court, as he got to know about the listing at a very short notice, and was under the impression that the counsel previously representing him would be attending the hearing. He avers that the said counsel acted in a negligent manner, and did not appear before the Trial Court on the said date. He further argues that the Appellant would suffer gross prejudice in case the matter is dismissed for non-prosecution, and not

¹ “CrPC”

² “NI Act”



decided on its merits. He submits that the matter pertains to dishonoured cheques issued by the Respondent towards the discharge of his liabilities and therefore, the Appellant is squarely entitled to prosecute him for the offence under Section 138 NI Act.

9. The Respondent, on the other hand, strongly opposes the request, contending that the matter was listed before the Trial Court for cross-examination of the Appellant on several occasions. However, the Appellant was present only on one date, *i.e.*, on 7th June, 2018, and remained absent on rest of the eight dates. In such circumstances, the Trial Court correctly came to the conclusion that the Appellant was not interested to proceed with the case, and dismissed it for non-prosecution.

10. The Court has considered the submissions of the parties. Counsel for the Appellant is present before us, and states that the Appellant is interested in pursuing the matter and wishes to prosecute the case before the Trial Court. He has explained that his non-appearance before the Trial Court was on account of negligence of the counsel previously representing him. In the opinion of the Court, the explanation offered by the Appellant seems plausible, and he should not be denied the opportunity to have his case adjudicated on its merits owing to the negligence of the counsel. Accordingly, in the interest of justice, the impugned order is set aside and the complaint is restored to its original number, subject to the payment of INR 25,000/- by the Appellant to the Respondent.

11. In view of the foregoing, the present appeal is disposed of.



12. The parties shall appear before the Trial Court on 8th April, 2025.

SANJEEV NARULA, J

MARCH 24, 2025/PB