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

+ **CRL.L.P. 568/2018**

SMT. SOFIA GARG

.....Petitioner

Through: Mr Mahesh Mahani, Adv.

versus

STATE OF DELHI (N.C.T. OF DELHI) AND ANOTHER

.....Respondents

Through: Mr Yudhvir Singh Chauhan, APP for State
Mr Lalan Chaudhary, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

03.02.2025

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CRL.M.A. 31188/2018

1. This is an application seeking condonation of 42 days delay in filing the appeal.
2. In view of the submissions made by learned counsel and for the reasons stated in the application, the delay of 42 days in filing the appeal is condoned.
3. The application is disposed of.

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4. This is an application filed under section 378(4) of the Code of Criminal Procedure, 1973 seeking grant of leave to appeal to challenge the judgment dated 09.05.2018 passed by the learned Additional Sessions Judge-05, East District, Karkardooma Courts, Delhi in Criminal Appeal No.



190/2017 titled '*Sachin Kumar vs The State(Gove of NCT of Delhi) and Anr*'.

5. The facts are that the petitioner along with her husband had given a loan of Rs. 3,40,000/- to the respondent no.2. In order to repay the loan, the respondent no. 2 issued 2 cheques, however the same when presented, were dishonoured with the remark 'Payment stopped by drawer'. Aggrieved, the petitioner filed a complaint under section 138 of the Negotiable Instruments Act, 1881, after which, the learned MM convicted the respondent no. 2 for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 vide judgment of conviction dated 27.10.2017 and sentenced the respondent no. 2 to undergo simple imprisonment for a period of six months along with a fine of Rs. 6,80,000/-, in case of default of fine, another period of one month simple imprisonment.

6. Thereafter, the respondent no. 2 challenged the judgment of conviction and the order of sentence passed by the learned MM before the learned Sessions Court and the learned Sessions Court vide judgment dated 09.05.2018 acquitted the respondent no. 2 for the offences punishable under section 138 of the Negotiable Instruments Act, 1881.

7. The reasons given by the learned Sessions Court were that the petitioner did not appear as a witness and hence, the respondent no. 2 could not cross-examine the petitioner/complainant. Further, the learned Sessions Court was of the view that the evidence of the husband of the petitioner has no value and cannot be read in evidence.

8. Hence the respondent no. 2 was acquitted.

9. It cannot be lost sight that the petitioner and her Attorney who gave the evidence are husband and wife. The husband had full authority for and



on behalf of his wife to give evidence and was competent and fully aware of the factual matrix.

10. I am of the view that the issue needs consideration.

11. Issue notice.

12. Mr Chauhan, learned APP accepts notice on behalf of the State.

13. Mr Chaudhary, learned counsel accepts notice on behalf of respondent No.2.

14. In this view of the matter, the petition seeking leaving to appeal is allowed and the appeal is directed to be numbered.

CRL.A **(to be numbered)**

15. For the reasons stated in the appeal, the appeal is “**Admitted.**”

16. Since the petition is of the year 2018, list the appeal for hearing on 22.05.2025.

17. The parties are at liberty to obtain copy of the Trial Court Records from the Registry in accordance with Delhi High Court Rules & Procedures.

JASMEET SINGH, J

FEBRUARY 3, 2025

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Click here to check corrigendum, if any