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

+ **CRL.L.P. 27/2017**

M/S ASIAN GRANITO INDIA LTD

.....Petitioner

Through: Mr. Gaurav, Mr. Rohtash Basoya and
Mr. Govil Upadhyaya, Advocates.

versus

SATISH GUPTA

.....Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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24.04.2025

CRL.M.A. 966/2017 (condonation of delay)

1. Application under Section 5 of the Limitation Act, 1963 has been filed on behalf of the Petitioner, seeking condonation of delay of 186 days in filing the accompanying Appeal.
2. For the reasons stated in the Application and in the interest of justice, the delay of 186 days in filing the accompanying Appeal is condoned and the Application is allowed.
3. The Application is disposed of accordingly.

CRL.L.P. 27/2017

4. Criminal Leave Petition under Section 378(4) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) has been filed on behalf of the Petitioner for grant of Leave to Appeal against the Judgment/Order dated 12.04.2016, passed by the learned Metropolitan Magistrate, Saket District Court, Delhi *vide* which the Complaint under

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Section 138 of the Negotiable Instrument Act, 1881, has been dismissed in default.

5. Considering the grounds sought for seeking Leave to Appeal, the Leave Petition is allowed.

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

6. Appeal under Section 378 of Cr.P.C. read with Section 482 Cr.P.C. has been filed on behalf of the Appellant against the Judgment and Order dated 12.04.2016 passed by the learned Metropolitan Magistrate, Saket, New Delhi.

7. It has been submitted in the Appeal that the Complainant was under the impression that initially, the Complaint was filed in Ahmedabad, Gujarat but pursuant to the directions of the Apex Court, the case was refiled in Delhi. The Accused/Respondent was summoned but he failed to appear. Thereafter, the employee of the Petitioner resigned and in the interim, the Complaint got dismissed in default *vide* the impugned Order dated 12.04.2016. It is submitted that the non-appearance was for the aforesaid reasons and not intentional, the impugned Judgment be set-aside and the Leave to Appeal be granted. The Complaint be restored to its original number.

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

9. The perusal of the Order shows that on the said date, neither the Complainant nor the Respondent had appeared on 12.04.2016. It is essentially a procedural Order where the Complaint got dismissed in default and not on merits.

10. 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

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on one day fixed for trial, the Magistrate *vide* Order dated 22.6.2001 had dismissed his Complaint and acquitted the accused. The appeal under Section 378 (4) of Cr.P.C. to the High Court was also dismissed. The Apex Court restored the Complaint and set-aside the Order/Judgment 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.

11. Considering the reasons given for non-appearance and in the light of the aforesaid Judgment, the impugned Order/Judgment dated 12.04.2016 is hereby set-aside and the Complaint is restored to its original number.

12. The Appeal is disposed of accordingly.

13. The Petitioner is directed to appear before the learned Trial Court on 02.05.2025 whereby the learned Metropolitan Magistrate shall proceed further in accordance with law.

NEENA BANSAL KRISHNA, J

APRIL 24, 2025/RS