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

+ **CRL.L.P. 665/2017**

SACHIN TYAGI

.....Petitioner

Through: Counsel for Petitioner (appearance
not given)

versus

SURESH TYAGI

.....Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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01.04.2025

CRL.M.A. 19020/2017 (condonation of delay)

1. Application under Section 5 of the Limitation Act has been filed on behalf of the Petitioner for condone the delay of 56 days in filing the accompanying Leave Petition.

2. For the reasons stated in the Application and in the interest of justice, the delay of 56 days in filing the accompanying Leave Petition, is condoned and the same is allowed.

3. The Application is disposed of accordingly.

CRL.M.A. 19022/2017 (condonation of delay in refilling)

4. Application under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C'*) has been filed on behalf of the Petitioner for condone the delay of 238 days in refiling the accompanying Leave Petition.



5. For the reasons stated in the Application and in the interest of justice, the delay of 238 days in refiling the accompanying Leave Petition, is condoned and the same is allowed.

6. The Application is disposed of accordingly.

CRL.L.P. 665/2017

7. Criminal Leave Petition under Section 378(4) of Cr.P.C. has been filed on behalf of the Petitioner seeking leave to appeal against the Order dated 29.08.2016 passed by the learned CMM, Shahdara in CC No. 3681/2016 under Section 138 of the Negotiable Instrument Act, 1881 (*hereinafter referred to as 'N.I. Act'*).

8. Considering the grounds sought for seeking Leave to Appeal, the Leave Petition is allowed. Leave granted and Appeal be registered.

CRL.A./2025 (to be numbered)

9. Criminal Appeal under Section 378(4) of CrPC has been filed on behalf of the Appellant, Sachin Tyagi for setting aside the Order dated 29.08.2016, passed by the learned CMM, Shahdara in the Case bearing CC No. 3681/2016, titled as *Sachin Tyagi vs. Suresh Kumar*.

10. None is present on behalf of the Respondent today. The record shows that he had been duly served on 06.02.2020. The Respondent was represented through his counsel.

11. It is submitted in the Appeal that the Appellant/Complainant had filed a Complaint under Section 138 of the N.I. Act. On 29.08.2016, the Respondent/accused has put in appearance, but the Complainant's Counsel was unable to appear as Complainant was suffering from Chikungunya and his Counsel was held up in a case in Sonipat. He had requested his



colleague, Mr. Ravinder Bansal to appear in the matter but could not appear because of which the Complaint Case was dismissed and the Respondent discharged *vide* Order dated 29.08.2016.

12. Submissions heard and the record perused.

13. Essentially, the Complaint under Section 138 of the N.I. Act has been dismissed in default at the initial stage when the accused/Respondent had put in his appearance in CC No. 3681/2016.

14. 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) of 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.

15. In the present case, sufficient cause for absence on the said date has been shown. Thus, in view of the submissions made and the reasons stated in the Appeal, the impugned Order dated 29.08.2016 is hereby set-aside.

16. The parties are directed to appear before the learned Metropolitan Magistrate on 14.04.2025 and the learned Metropolitan Magistrate shall consider the matter on its merits.



17. The Appeal is disposed of accordingly.

NEENA BANSAL KRISHNA, J

APRIL 1, 2025/RS