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

+ **CRL.L.P. 27/2018**

M/S SOFTLINE STUDIO SERVICESPetitioner
Through: Mr. Jitendra Kumar Jha &
Mr. Jitender Rathi, Advs.

versus

M/S NEON FILMSRespondent
Through: Mr. Sanjeev Kumar, Adv.
through V.C.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
16.04.2025

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1. The present petition is filed challenging the order dated 13.09.2017 (hereafter '**the impugned order**') passed by the learned Metropolitan Magistrate, Saket Courts, New Delhi in CC No. 614677/2016.
2. The petitioner is aggrieved by the dismissal of his complaint under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**') for non-prosecution.
3. The learned Trial Court by impugned order dated noted that the notice was framed on 20.12.2016 and the matter was listed for complainant evidence on 30.01.2017. However, on the said date, the petitioner / complainant was absent and consequently, cost of ₹500/- was imposed on him.
4. On the next date of hearing, that is, on 02.03.2017, none had appeared on behalf of the complainant again in the morning hours and another cost of ₹2,000/- was imposed on him. The order, however, records that the counsel for the complainant

CRL.L.P. 27/2018

Page 1 of 4



appeared after half an hour and was opportunity was granted to the complainant to lead complainant evidence on 03.05.2017, when again the complainant did not appear and the matter was adjourned to 15.07.2017, on which date again exemption application was filed on behalf of the complainant which was allowed subject to payment of cost of ₹5,000/-.

5. On 15.07.2017 also, it appears that the complainant failed to appear. The learned Trial Court noted that the previous costs had not been paid.

6. Considering the aforesaid, the learned Trial Court denied the complainant the opportunity to lead further evidence and noting that no evidence has been led by the complainant, the statement of the respondent / accused under Section 313 of the Code of Criminal Procedure, 1973 was dispensed with and he was acquitted for the offence under Section 138 of the NI Act.

7. The learned Trial Court also took note of the fact that the accused / respondent comes from Mumbai.

8. The learned counsel for petitioner submits that the complainant as well as the counsel who represented him were present in the Court on the said date as they were appearing in some other case. He relies upon the document pertaining to complaint case No.618-76/2016 and 614677/2016 indicating that another matter between the parties was listed on the same date before the Saket Court.

9. This Court finds no infirmity in the order passed by the learned Trial Court. However, at the same time it cannot be ignored that the petitioner/complainant immediately on the acquittal of the respondent had approached this Court by filing the present petition in the month of November, 2017.

10. For the reasons beyond the control of the parties, the matter
CRL.L.P. 27/2018

Page 2 of 4



has been pending before this Court since that time.

11. The learned counsel for the respondent submits that frivolous complaint was filed by the petitioner and it is only for that reason that he was not pursuing the complaint. He submits that another complaint was filed by the petitioner which was dismissed on merits. He further submits that the respondent on each date was appearing in person and has to come from Mumbai to pursue the case and grave prejudice was caused to him on non-appearance of the petitioner.

12. He, however, states that he will be satisfied if the complaint is restored on the petitioner being subjected to heavy cost and on an undertaking that he will not take unwarranted adjournments and will pursue the complaint diligently.

13. He further requests that the learned Trial Court be directed to exempt the respondent from personal appearance and be permitted to appear through video conferencing.

14. The learned counsel for the petitioner submits that he has no objection if the respondent henceforth appears through video conferencing before the learned Trial Court.

15. Considering the aforesaid, this Court is of the opinion that one last opportunity be granted to the petitioner to pursue his complaint on merits.

16. It remains undisputed that the petitioner on 13.09.2017 was present before the Saket Court in another case. The same is evidenced by the documents annexed with the present petition.

17. I am of the opinion that the interest of justice would be served if the respondent is adequately compensated and the petitioner is put to terms that he would not take any unwarranted adjournment.

18. Leave to file the Criminal Appeal is granted.

CRL.L.P. 27/2018

Page 3 of 4



Criminal Appeal **/2025/ be numbered)**

19. For the reasons stated above, the appeal is allowed. The impugned order is set aside. The complaint is restored to its original number on payment of cost of ₹60,000/- to the respondent.

20. The learned Trial Court is requested to exempt the respondent / accused person from personal appearance unless specifically required since he has to come from Mumbai.

21. List before the concerned Trial Court on 08.05.2025.

22. A copy of this order be sent to the Principal District & Sessions Judge, South East, Saket Courts for necessary compliance.

AMIT MAHAJAN, J

APRIL 16, 2025

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