



2026:DHC:1708



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

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Judgment Reserved on: 23.02.2026

Judgment pronounced on: 27.02.2026

+ **CRL.A. 1376/2010**

MANOJ SWAMI DECD. THR. SEEMA SWAMIAppellant

Through: Mr. Narender Mann, Advocate

versus

STATE & ANR.Respondents

Through: Mr. Utkarsh, APP for the State.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 378 (4) of the Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by the legal heir of the complainant in Complaint Case No. 925/1/09 of 2008 on the file of the Senior Civil Judge, Patiala House Courts, Delhi assailing the order dated 13.08.2009 by which the complaint filed alleging commission of the offence punishable under Section 138 Negotiable Instruments Act, 1881, (the N.I Act) has been dismissed for default.



2. The complaint alleging the commission of the offence punishable under Section 138 of the NI Act was filed before the Additional Chief Metropolitan Magistrate, Patiala House Court, New Delhi. Thereafter, the case is seen transferred to SCJ-cum-RC, New Delhi. On going through the trial court records, I find order dated 02.02.2009 of the learned Senior Civil Judge which reads thus:-

“02.02.09

File received by way of transfer subsequent to order of Ld. District Judge, vide notification no. 145-192/01/F.3(4) MM dated 02.01.2009. Be got checked and registered.

File taken up today as Sunday was holiday.

Present: None.

However as the matter is received by transfer no adverse order is passed. Compliance of previous order be made on filing of PF/RC/Speed Post/Courier/dasti, returnable for 27.04.09.”

3. Notification no. 145-192/01/F.3(4) dated 02.01.2009 referred to reads:-



“ OFFICE OF THE DISTRICT & SESSIONS JUDGE : DELHI

ORDER

*In pursuance to Delhi High Court Order No. 25/DHC/Gaz/VI.E2(a) dated 22.10.2008 which reads as follows foot note No. 70 "The Sessions Judge, Delhi, in consultation with the Chief Metropolitan Magistrate, Delhi, may assign some criminal work to the newly created civil courts, for trial and disposal in accordance with law, to keep them busy till institution of fresh civil cases becomes adequate on their respective files." with a view to ensure equal distribution of the work amongst all the Metropolitan Magistrates at Patiala House Courts, Rohini & Dwarka Courts, the cases under Section 138 NI Act excluding those of "Financial Institutions", as specified in Note No. 67 of the aforesaid order of Hon'ble High court of Delhi mentioned in Column No. C pending in the courts mentioned in Column A are hereby withdrawn on day to day basis as per cause list and assigned to the court mentioned in column B w.e.f. 6.1.2009 for disposal in accordance with law:-
.....”*

4. Pursuant to the aforesaid order, the trial court as per order dated 13.08.2009 dismissed the complaint for default. The order dated 13.08.2009 reads thus:-

“Complainant is requested [SIC] to have died.



The complaint is dismissed in default. File be consigned to record room.”

5. Aggrieved, the present appeal has been filed by the legal representative of the original complainant.

6. The learned counsel for the appellant relied on the dictums in **Jimmy Jahangir Madan vs. Bolly Cariyappa, (2004) 12 SCC 509** to substantiate the argument that the trial court went wrong in dismissing the complaint when provisions of Section 302 Cr.PC permits the legal representative to prosecute the complaint.

7. In the light of the dictums of the Apex Court in **Ashwin Nanubhai Vyas v. State of Maharashtra, 1966 SCC OnLine SC 253 : AIR 1967 SC 983; Jimmy Jahangir Madan (supra) and Rashida Kamaluddin Syed v. Shaikh Saheblal Mardan, (2007) 3 SCC 548**, the trial court apparently went wrong in dismissing the complaint for default.



8. Hence, the appeal is allowed. The impugned order is set aside. The matter is remanded back to the trial court. The complaint shall stand restored to file.

9. The trial court is directed to dispose the matter in accordance with law. As the case is of the year 2009, the trial court is directed to make all endeavours to see that the matter is disposed of as expeditiously as possible.

10. The Registry is directed to send the case records to the trial court concerned.

11. Application(s), if any pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

FEBRUARY 27, 2026

RS