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

+ **CRL.L.P. 40/2012**

**ESCORTS LIMITED**

..... Petitioner

Through: Mr. R.M. Bagai, Adv.

versus

**BALAJI MOTORS & ORS**

..... Respondents

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER**

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**26.10.2017**

Despite substituted service as recorded in the order dated 09.07.2015, respondent nos. 1 to 5 have not been appearing. Even today there is no appearance on behalf of the said respondents.

Mr. Bagai, the learned counsel for the petitioner submits that by the impugned order dated 29.04.2011 the case was first adjourned to 16.07.2011, however, in the same afternoon, in the absence of the counsel for the petitioner, the trial court modified its adjournment order and dismissed the case. The order dated 29.04.2011 records as under:

*“29.04.2011*

*Present: Counsel for complainant*

*Report of B/w received back. Report perused.*

*In view of the report, issue court notice to SHO concerned to give an explanation for non service of B/w and for non filing the report of the same for 16.7.2011*

*(Arul Varma)*

*MM: DW ARKA-29.04.11*

29.04.2011 (At 12:30 PM)

*At this juncture, Const. Sukhbir No. 1941/E PS Anand Vihar has appeared and filed service report on B/w. Report perused.*

*Separate statement of Const. Sukhbir recorded.*

*A perusal of the service report as well as separate statement of Const. Sukhbir reveals that the complainant has furnished wrong address dismissed with costs of Rs. 10,000/- to be deposited with the DLSA*

*Previous order accordingly modified.*

*File be consigned to record room.*

*(Arul Varma)*

*MM: DW ARKA-29.04.1..”*

The statement of Constable Sukhbir recorded on that day reads as under:-

*“I hereby state that I proceeded from New Delhi towards Karnataka on 19.4.2011 to get the B/w executed against the accused.*

*I hereby state that there is no shop by the name of Balaji Motors in Humnabad, District Bidder. I made complete inquiries and even took the local police and met the Members of Market Association at Dr. Rajender Prasad Ganj Market.*

*Thereafter, I proceeded to Gulbarga and there also I found that there is no shop by the name of Balaii Motors.*

*RO&AC*

*(Arul Varma)*

*MM: DW ARKA-29.04.2011.”*

The learned counsel contends that the impugned order is ex-facie

improper and that the case should not have been dismissed without according an opportunity to the petitioner to respond to the statement of the police constable which formed the basis of dismissal of the complaint. The learned counsel further submits that the accused had been duly represented by counsel i.e. the respondent had indeed been duly served, had moved an application through counsel for exemption from appearance as well. This is recorded in the order dated 04.04.2007, which reads as under:

*“04.04.2007*

*C.C. No. 135/2007*

*Present: Ld. Counsel Ms. Anubha Tahkur with  
Authorized representative for the complainant.*

*Counsel Ms. Aditi Jain for the accused No. 1 to 5.*

*None has appeared for accused M/s Balaji Motors.*

*An application for exemption on behalf of accused no. 1 to 5  
moved by Ms. Aditi Jain. Ld. Counsel for the accused.  
Heard and the same is allowed.*

*Now to come up for appearance of accused persons,  
consideration of compromise/ notice on 19.05.2007....”*

M/s Balaji Motors was arrayed as respondent No.1 and was represented through counsel. Therefore, for the trial Court to have dismissed the case based entirely on the statement of the constable Mr. Sukhbir is ex-facie erroneous on the basis of the records. In fairness of procedure, the statement should have been put to test by the petitioner/complainant.

In view of the aforesaid, the Court is of the opinion that the Trial Court has made an error in dismissing the case. Accordingly, the impugned order dated 29.04.2011 is set aside. The case is remanded back to

the Court concerned for continuation of the trial from the stage it was dismissed. The petition is disposed off in the above terms.

List before the District Judge, Dwarka Courts for assigning of the case to the Magistrate concerned on 15.11.2017.

**NAJMI WAZIRI, J**

**OCTOBER 26, 2017/kk**