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

+ **CRL.L.P. 558/2019**

BSES RAJDAHANI POWER LIMITED Petitioner

Through: Mr. Sharique Hussain,
Adv.

versus

BABITA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

22.01.2024

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CRL.L.P. 558/2019

1. The present Criminal Leave Petition is filed, challenging order dated 27.07.2019, passed by the learned Metropolitan Magistrate-02, PHC, New Delhi in Ct. Case No. 20614/2016 (hereafter '**the impugned order**'). The learned Trial Court by the impugned order had dismissed the complaint filed by the petitioner for non-prosecution.

2. The present petition is pending since 2019. The notice in the present case was duly served on the respondent, however, respondent failed to appear. This Court by order dated 01.11.2023, had also issuedailable warrants against the respondent but report with respect to the execution of the said warrant is still awaited. The complaint was dismissed by way of the impugned order, at the initial stage and no notice was issued to the respondent.

3. The learned counsel for the petitioner submits that the learned counsel for the complainant (petitioner herein) had duly appeared on the said date before the learned Trial Court.



However, the Authorized Representative of the complainant was not present. He submits that the learned Trial Court in such scenario ought not to have dismissed the complaint.

4. Having heard the learned counsel for the petitioner and from the perusal of the impugned order, this Court is of the opinion that the leave to appeal deserves to be granted to the petitioner.

5. Consequently, the present petition for criminal leave to appeal is allowed and is disposed of accordingly.

Criminal Appeal /2024 (to be numbered)

6. Let this criminal appeal be registered and numbered.

7. It is seen that the notice was served on the respondent, however, she refused to accept the notice which led to the issuance of the bailable warrants by this Court by order dated 01.11.2023. Since the notice was not issued in the proceedings before the learned Trial Court, this Court does not consider it apposite to further adjourn the present proceedings, awaiting the appearance of the respondent.

8. The learned counsel for the petitioner submits that complainant / petitioner had been diligently pursuing the complaint and Authorized Representative of the petitioner had not appeared on one date. The same, in this Court's opinion ought not to have been the ground for dismissing the complaint for non-prosecution. The ends of justice would have met by imposing an appropriate cost on the complainant for delaying the proceedings.

9. Even otherwise no prejudice will be caused to the respondent since, notice was yet to be issued by the learned Trial Court.

10. In such circumstances, this Court considers it apposite to



set aside the impugned order and restore the complaint to its original number, subject to payment of cost of ₹20,000/- in favour of the Delhi High Court Legal Service Committee within a period of two weeks.

11. In view of the above, the bailable warrants issued by this Court by order dated 01.11.2023 also stands cancelled.

12. The Criminal Appeal /2024 (to be numbered) is allowed in aforesaid terms.

13. The appellant is directed to appear before the learned Trial Court on 26.02.2024.

14. A copy of this order be sent to the learned Trial Court.

AMIT MAHAJAN, J

JANUARY 22, 2024
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