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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 1701/2025, CRL.M.A. 7607/2025-Stay, CRL.M.A. 7608/2025-Exp

KAMAL KANT

.....Petitioner

Through: Mr. Rajesh Raina, Mr. Rehmat Ali,
Mr. Shubham Sharma, Advs.

versus

YASHPAL ALAGH

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

11.03.2025

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1. The present petition has been filed by the petitioner under *Article 227* of the Constitution of India read with *Section 482* of Code of Criminal Procedure, 1973 (*Section 528* of Bharatiya Nagarik Suraksha Sanhita, 2023) seeking to set aside the orders dated 02.12.2024 and 17.12.2024 passed by the learned Judicial Magistrate First Class (NI ACT) Digital Court-03 (North West), Rohini Courts, Delhi in C.C. NO. 1985/2022.

2. In a nutshell, the case of the petitioner is that the said complaint case was fixed for cross-examination of the complainant at 02:00 PM on 02.12.2024 in Room No. 105 at Tis Hazari Courts, Delhi before the learned Trial Court, however, since the learned counsel for the petitioner was unable to make it to the designated courtroom at the afore-noted time of 02:00 PM, the same led to passing of the impugned order.



3. As per learned counsel for the petitioner, he was unable to make it to the designated Room No. 105 at the nominated time of 02:00 PM on 02.12.2024 since the whereabouts thereof were not specified in the earlier order dated 30.11.2024 passed by the learned Trial Court as also since he was rushing back after attending a hearing in another matter listed before the Patiala House Courts, New Delhi and he got stuck in a traffic jam. In effect, as per learned counsel for the petitioner the mere delay of 15-20 minutes on 02.12.2024 is not a sufficient reason for the learned Trial Court to pass the impugned order against the petitioner.

4. He further submits that even otherwise, qua the petitioner, it has already been recorded in the subsequent order dated 17.12.2024 passed by the learned Trial Court on the basis of the medical document as well as the cash bill of the OPD qua the same pertaining to the sister of the petitioner/accused that he was unable to appear on 02.12.2024, since on the said date itself, he had taken his sister to Jaipur Golden hospital at 09:00 AM on account of severe pain in the chest area. Additionally, the learned Trial Court vide the said subsequent order of 17.12.2024 reduced the earlier cost of Rs. 7,000/- as imposed vide order dated 02.12.2024 to Rs. 5,000/-.

5. Based thereon, he also submits that even the subsequent order dated 17.12.2024 also requires to be set aside as well.

6. Under the existing circumstances, particularly, since the matter is listed before the learned Trial Court today itself and considering the nature of the proceedings involved as also the factum that an advance copy of the present petition has been duly served on the respondent, it is felt appropriate, and in the interest of justice, that the issuance of notice to the respondent is dispensed with.



7. Taking the aforesaid factors into consideration cumulatively, primarily since the learned counsel for the petitioner was able to make it to the designated Room No. 105 after around 20 minutes and that too whence the whereabouts thereof were not specified in the earlier order dated 30.11.2024 passed by the learned Trial Court, the present petition is allowed and the impugned orders dated 02.12.2024 is set aside. For the said reasons, only the cost of Rs. 5,000/- imposed vide subsequent order dated 17.12.2024 by the learned Trial Court is also waived.

8. Accordingly, the present petition is allowed and the proceedings before the learned Trial Court are renotified on 15.04.2025 for the purpose already fixed, i.e. for cross-examination of the complainant by the learned counsel for the petitioner herein.

9. Learned counsel for the petitioner may intimate the learned Trial Court about the proceedings before this Court today.

SAURABH BANERJEE, J

MARCH 11, 2025/bh