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

+ **CRL.L.P. 529/2024**

M/S. M.K. ASSOCIATES

.....Petitioner

Through: Mr. Hirein Sharma, Mr. Amir
Chaudhary, Mr. Paras Sharma, Mr.
Saurabh Ahuja, Advocates.

versus

THE STATE, GOVT. OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Digam Singh Dagar, APP for the
State.
Ms. Ruchika Rathi and Mr. Junaid
Khan, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

21.02.2025

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By way of the present petition filed under section 419(4) of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner seeks leave to appeal order dated 17.08.2024 passed by the learned Judicial Magistrate First Class (NI Act) Digital Court-01, District West, Tis Hazari Courts, Delhi in complaint bearing CC No.2238/2021, whereby the learned Magistrate has dismissed the complaint filed by the petitioner for non-prosecution.

2. Mr. Hirein Sharma, learned counsel appearing for the petitioner submits, that the petitioner is embroiled in several other criminal cases; and was therefore unable to appear before the learned



Magistrate in the aforesaid case for certain reasons as have been explained in court.

3. Counsel submits, that out of the 04 dates *prior* to the date of impugned order, on which also the petitioner had failed to appear, on 02 of those dates petitioner's counsel also could not be present before the learned Magistrate since counsel's mother was seriously ill.
4. Mr. Sharma points-out, that the cheque in question is for the sum of Rs. 42 lacs; and respondent No.2 should not be permitted to evade liability without answering the case on merits.
5. Issue notice.
6. Mr. Digam Singh Dagar, learned APP appears for the State on advance copy; accepts notice; and submits that they have no role in the matter.
7. Ms. Ruchika Rathi, learned counsel is present on behalf of respondent No.2; and accepts notice.
8. Considering the nature of the relief sought, leave to appeal against the impugned order is granted. The appeal is taken-up for consideration today itself.
9. Ms. Rathi, learned counsel for respondent No. 2 submits that the petitioner had failed to pursue the matter before the learned Magistrate on 04 dates *i.e.*, 08.03.2022, 13.04.2022, 04.07.2022, and 02.08.2022 despite costs of Rs.10,000/- and Rs.500/- having been imposed; and by reason thereof on the subsequent date, *i.e.*, 17.08.2024, the learned Magistrate was constrained to dismiss the matter for non-prosecution.



10. It is observed (i) that the run of events does not show that the matter has been prolonged inordinately; (ii) that the cheque in question is for a substantial sum of Rs. 42 lacs; and (iii) that the present petition was filed on 26.10.2024, that is soon after the date of the impugned order of 17.08.2024, on overall considerations of justice and fairness, this court is persuaded to allow the petition, thereby restoring complaint bearing CC No.2238/2021 to its original position and number, *subject to* the petitioner paying to respondent No.2 costs of Rs.75,000/- within 04 weeks.
11. Subject to the above, let the matter be placed before the learned Magistrate on 11.03.2025, with a direction to proceed with the criminal complaint from the stage that it was left-off, in accordance with law.
12. Registry is directed to send a copy of this order to the learned Magistrate *forthwith*.
13. The petition is disposed of in the above terms.
14. Pending applications, if any, stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 21, 2025

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