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

+ CRL.M.C. 1372/2025 & CRL.M.A. 6036/2025

POOJA KUMAR

.....Petitioner

Through: Mr. Adab Singh Kapoor and Ms.
Kavita Bhardwaj, Advocates.

versus

STATE NCT OF DELHI & ANR.

.....Respondents

Through: Ms. Manjeet Arya, APP for the State.
SI Parveen Kumar, P.S.:Malviya
Nagar.
Ms. Harita Mehta, Mr. Paras Chawla,
Ms. Jyoti Kumari and Ms. Anuradha,
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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25.02.2025

CRL.M.A. 6037/2025

Exemption allowed, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed-of

CRL.M.A. 6038/2025

By way of the present application filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioner seeks condonation of about 106 days delay in *re-filing* the petition.

2. For the reasons stated in the application, which is duly supported by an affidavit, the delay *re-filing* is condoned.
3. The application is accordingly allowed.
4. The petition is taken on Board.



CRL.M.C. 1372/2025

5. By way of the present petition filed under section 528 of the BNSS, the petitioner impugns order dated 27.09.2024, whereby the learned Sessions Judge, Saket Courts, Delhi has dismissed the revision petition bearing No.399/2024 filed by the petitioner impugning order dated 23.07.2024 passed by the learned Judicial Magistrate, Mahila Court, Saket Courts, Delhi.
6. Issue notice.
7. Ms. Manjeet Arya, learned APP for the State; and Ms. Harita Mehta, learned counsel for respondent No. 2 appear on advance copy; and accept notice.
8. In view of the nature of the relief sought, it is not considered necessary to call for a written response in the matter.
9. The court has heard Mr. Adab Singh Kapoor, learned counsel appearing on behalf of the petitioner; Ms. Arya, learned APP appearing for the State; as well as Ms. Mehta, learned counsel appearing for respondent No.2, at length.
10. Mr. Kapoor, learned counsel for the petitioner submits that *vide* order dated 23.07.2024, the learned Magistrate had dropped the petitioner - who is the complainant in case FIR No.0711/2021 dated 27.12.2021 registered under sections 498A/406/506/34 of the Indian Penal Code at P.S.: Malviya Nagar, New Delhi - from the array of prosecution witnesses in view of the petitioner's non-appearance on 04 consecutive dates. Furthermore, the learned Magistrate had also dispensed-with recording the evidence of the remaining prosecution witnesses, observing that they were merely formal witnesses.



Attention is drawn to the relevant portion of order dated 23.07.2024, which reads as follows:

“Matter is listed for PE. Complainant is not present even today. It is submitted by counsel for complainant that complainant is unable to appear today as she is unwell. An exemption application along with medical prescription of the complainant has also been furnished.

Perusal of record shows that complainant has not been appearing before the court for last four dates. Repeated adjournments are being sought on behalf of complainant on one pretext or another. Even today, a medical prescription has been filed very conveniently by complainant. The said prescription has been given by a private doctor, the details of whom are not even legible. On the basis of this document, no indulgence can be given to the complainant.

As this court has already given sufficient opportunities to complainant to appear before the court, this court is of the view that complainant is not deserving of any further opportunities. Complainant is hereby dropped from the list of witnesses.

As complainant is the only material witness in present case, this court does not find any reason to record evidence of remaining formal witnesses, just to complete procedural formalities. The evidence of remaining prosecution witnesses is hereby dispensed with. PE stands closed.

At this stage, it is stated on behalf of accused that he does not wish to lead defence evidence. DE stands closed.

List for final arguments on 30.09.2024.”

11. It is submitted by Mr. Kapoor that consequent thereupon, the matter has been adjourned from time-to-time by the learned Magistrate and is listed next on 06.03.2025 for final arguments.
12. Counsel submits that the petitioner had challenged order dated 23.07.2024 by way of Criminal Revision Petition bearing



No.399/2024, which has also been dismissed by the learned Sessions Court by order dated 27.09.2024, with the following observations:

“8. Perusal of record shows that the present FIR was registered in 2021 whereas charge sheet was filed on 02.09.2022. Charge in the present case was framed against the revisionist no.1/husband on 11.07.2023. Perusal of record reveals that after framing of charge on 11.07.2023, Ms. Shefali, Advocate appeared for the complainant on 18.10.2023 and filed her memo of appearance and sought exemption on behalf of complainant. Thereafter, on 11.01.2024 summons were issued for appearance of complainant. On 21.03.2024, exemption of the complainant was sought citing reasons of her personal difficulty which was allowed subject to cost of Rs. 10,000/- to be deposited in DLSA, South. Thereafter, vide impugned order dated 23.07.2024 exemption application of the revisionist/complainant was moved on the grounds of her illness along with medical prescription was dismissed, thereby dropping the revisionist/complainant from the list of witnesses. PE and DE were closed and matter was listed for final arguments.

“9. In the present case, the complainant did not appear before the Court for recording of her evidence continuously for four consecutive dates i.e. 18.10.2023, 11.01.2024, 21.03.2024 and lastly on 23.07.2024 and kept on moving exemptions after exemption through her counsel on the grounds of her personal difficulty and illness. On 11.01.2024, neither the complainant appeared in person nor through her counsel despite the fact that her counsel appeared on the previous date of hearing. Perusal of TCR reveals that the medical prescription filed along with exemption application is photocopy of the half upper portion wherein the details of Doctor are illegible and the address of hospital/clinic is missing. The exemption application filed on 23.07.2024 on behalf of the complainant has been moved in a casual manner without annexing original medical prescription or bill for payment to Doctor or for purchase of prescribed medicine. The photocopy of medical prescription filed with exemption application lacks credibility and reliability. Prior to date of impugned order, on two consecutive dates either exemption has been sought on oral request or personal



difficulty without explaining any grounds, for which adverse inference is drawn against the complainant. Revisionist/complainant has been grossly negligent in pursuing her case and despite affording number of opportunities, she failed to appear even once before the Ld. Trial Court. Complainant cannot be permitted to take the Court proceedings for granted and enjoy benefits of her own wrongs. Complainant by not appearing in the Court for last 4 dates is not only wasting the precious time of the Court but at the same time causing harassment to the accused who has been regularly appearing in person along with his counsel on each date. The argument that revisionist/complainant is the only public/vital witness of the case does not inspire any confidence as neither does it justify her non-appearance nor absolve her from her bounden duty to cooperate with the Court and proceed with the judicial proceedings. The Court proceedings will not be conducted as per whims and fancies of the complainant who is unnecessarily delaying it without just reason. Furthermore, complainant has failed to deposit previous cost of Rs. 10,000/- with DLSA, imposed upon her vide order dated 21.03.2024, which was passed while granting exemption to the complainant at the request of her counsel. In case, the intention of the complainant was fair and bonafide, she would have complied with the previous order of payment of cost, prior to moving exemption application on the date of impugned order. Ld. Counsel for the revisionist/complainant had argued on the merits of the case without appreciating that the present revision is against the impugned order with limited scope of deciding correctness of the impugned order whereby complainant was dropped as prosecution witness on account of her non-appearance, and not against the order of cognizance/summoning or order on charge.”

(emphasis supplied)

13. Mr. Kapoor submits, that as referred to in the impugned orders, the petitioner was *unable* to appear before the learned Magistrate by reason of her illness; and also for the reason that after being ousted from her residence in Malviya Nagar, New Delhi the petitioner was constrained to shift to Faridabad, Haryana, which led to logistical



problems for her in attending court proceedings in Delhi. Counsel submits, that by reason of the petitioner being dropped from the list of prosecution witnesses, the remaining ‘formal’ witnesses have also been dispensed-with; and respondent No.2 (husband) would now stand acquitted in the case, without trial and without the matter having been considered by the court on merits.

14. Ms. Arya argues that the learned Magistrate was constrained to close prosecution evidence in view of the repeated non-appearance of the petitioner on 04 consecutive dates. Learned APP submits that the order passed by the learned Magistrate is a well-reasoned order; and accordingly, the learned Sessions Court was right in upholding it.
15. Ms. Mehta appearing on behalf of respondent No.2 submits that the ground of ill-health sought to be canvassed on behalf of the petitioner is a ‘false’ ground, since the petitioner has been appearing in other connected proceedings before various courts; but specifically chose not to appear as a prosecution witnesses in the present case, to evade being cross-examined.
16. On an overall conspectus of the matter, the predominant aspects that require to be assessed are the following :
 - 16.1. Though Mr. Kapoor has attempted to persuade this court that non-appearance of the petitioner (who was the main prosecution witness) on the various dates was neither intentional nor deliberate, but was by reason of her ill-health and since she had moved residence to Faridabad, this court is not convinced as to the genuineness of the grounds cited for the petitioner’s non-appearance *on 04 consecutive dates spanning*



some 09 months, i.e., on 18.10.2023, 11.01.2024, 21.03.2024 and 23.07.2024.

- 16.2. Having dropped the petitioner from the list of prosecution witnesses for her repeated non-appearance in the case, the learned Magistrate has also proceeded to drop the other 02 witnesses who were police officers, observing that they were only ‘formal’ witnesses. Learned counsel for the petitioner has argued that investigation in the subject FIR was derelict; and the chargesheet filed was also defective, since 06 other relevant witnesses ought to have been added in the list of prosecution witnesses. Even if that be so, this court is of the view that now that the matter is at an advanced stage, the petitioner cannot be allowed to agitate that issue now;
- 16.3. However, this court is persuaded to rule in favour of the petitioner *only* by reason of one single fact, *viz.* that if the orders of the learned Sessions Court and of the learned Magistrate are allowed to stand, the petitioner’s allegations under sections 498A/406/506/34 IPC would be liable to be dismissed and respondent No. 2 would be acquitted in the matter, without the petitioner having deposed in support of her allegations.
- 16.4. While it cannot be gainsaid, that as disclosed from the record, the petitioner has been seriously remiss in participating in the prosecution, in the opinion of this court, considering the nature of the dispute and the allegations, interests of justice require that the matter be considered on merits.



17. That being said however, the petitioner cannot be permitted to have the impugned orders recalled without exemplary costs being imposed on her for her conduct in relation to the proceedings.
18. Accordingly, the present petition is allowed, thereby setting-aside order dated 23.07.2024 passed by the learned Magistrate and order dated 27.09.2024 passed by the learned Sessions Court, *subject to* the petitioner paying to respondent No.2 costs of Rs. 1,00,000/- (One Lac Only) within 04 weeks.
19. Subject to the above, the matter is restored before the learned Magistrate to the stage and position at which it was as of 23.07.2024; with a direction to the learned Magistrate to proceed with the case from that stage on merits, in accordance with law.
20. Since the next date of hearing before the learned Judicial Magistrate is 06.03.2025, it is clarified that further proceedings before the learned Magistrate would be deferred *until* costs are paid by the petitioner as directed above.
21. The petition is disposed-of in the above terms.
22. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 25, 2025

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