



2025:DHC:4020



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

% **Date of decision: 09.05.2025**

+ CRL.L.P. 127/2023

JAI MAHADEV AUTO DEALS THRU PROP. PRADEEP
KUMAR GARGPetitioner

Through: Mr. Krishan Kumar, Mr.
Shivam Bedi, Advs.

Versus

THE STATE NCT & ANR.Respondents

Through: Mr. Satish Kumar, APP for
State.
Mr. Ashutosh Kaushik, SC for
R-2.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

SHALINDER KAUR, J (ORAL)

1. The present criminal leave petition has been filed by the Petitioner under Section 378(4) read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), assailing the Order dated 31.10.2022, whereby the Complaint filed by the Petitioner under Section 138 of the Negotiable Instruments Act ('N.I. Act'), 1881, was dismissed for non-prosecution by the learned Metropolitan Magistrate (NI-Act) ('MM'), East District, Karkardooma Court, New Delhi.

2. The facts giving rise to the present petition, briefly stated, are that the Petitioner had rented out two Transport Service Rickshaws to



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Respondent No. 2, one from 02.09.2019 to 01.01.2021 at ₹12,450/- per month, and another from 10.10.2019 to 09.01.2021 at ₹10,500/- per month. Against the total outstanding rental dues of ₹3,24,350/-, Respondent No. 2 paid only a sum of ₹32,350/-. Consequently, due to persuasion, the Respondent no. 2 issued a cheque of the said amount in favour of the Petitioner, which was dishonoured on presentation. Owing to the subsequent failure of Respondent No. 2 to comply with the legal demand notice for payment of the remaining dues, the Petitioner initiated proceedings under Section 138 of the N.I. Act.

3. During the course of the trial, Respondent No. 2 appeared pursuant to the service of summons and sought time for cross-examining the Petitioner. On the next date of hearing, however, as the Legal Aid Counsel for the Respondent No. 2 was appointed on the very same day, a further adjournment was sought and the matter was accordingly posted for 24.05.2022, which was inadvertently noted as 24.06.2022 by the counsel for the Petitioner.

4. Owing to the said mistake, the Petitioner failed to appear on 24.05.2022, resulting in the imposition of cost of ₹3,000/- upon the Petitioner. The Petitioner was apprised of the said order only upon appearing before the learned MM on 24.06.2022, and subsequently filed an application seeking waiver of the cost so imposed.

5. On the next date of hearing, i.e., 06.08.2022, an adjournment was sought on behalf of the Respondents on the ground of non-availability of the Legal Aid Counsel, and the matter was again posted for 31.10.2022. On the said date, the Petitioner appeared in person and



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informed the learned MM that he was ready for cross-examination, however, due to poor network connectivity, his counsel could not join the proceedings through the video conferencing link. Despite this, the Learned MM proceeded to dismiss the complaint for non-prosecution as well as for non-payment of the cost of ₹3,000/- imposed earlier. Aggrieved thereby, the Petitioner has approached this Court by way of the present petition.

6. The learned counsel for the Petitioner submits that on 31.10.2022, the Complainant was present in-person and available for cross-examination by the learned counsel for the Respondent No. 2. However, due to technical glitches, the learned counsel for the Complainant was unable to join the proceedings *via* video-conferencing. The learned MM in a rash manner, noting the absence of the counsel for the Complainant, dismissed the complaint for non-prosecution, despite the Complainant's willingness to proceed with the cross-examination.

7. The learned counsel submits that the learned MM erred in imposing cost of Rs. 3,000/- on the Complainant, as recorded in the Order dated 24.05.2022, and subsequently dismissing the complaint, for non-prosecution and non-payment of the imposed cost, *vide* Order dated 31.10.2022. He further submits that the Petitioner had filed an application seeking waiver of the said cost, which still remains pending before the learned MM.

8. *Per Contra*, the learned counsel for the Respondent while seeking the dismissal of the present petition, submits that the



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Complainant repeatedly sought adjournments. However, on 31.10.2022, even though the Complainant was present but the absence of his counsel and the non-payment of the cost imposed upon him compelled the learned MM to dismiss the complaint for non-prosecution. He submits that the learned MM has not acted hastily but has passed the Impugned Order noting the past conduct of the Petitioner.

9. Having heard the learned counsels for the parties and perused the record as also the Impugned Order dated 31.10.2022, it is pertinent to note that on 24.05.2022, the learned MM imposed a cost of Rs. 3,000/- on the Petitioner for non-appearance and thereby granting final opportunity for the cross examination of the Petitioner. Nonetheless, the Petitioner failed to comply with the said Order as the cost remained unpaid. Thereafter, on 31.10.2022, the learned counsel for the Petitioner failed to appear before the learned MM owing to certain technical glitches, nonetheless, the Petitioner appeared in person to readily assist in his cross-examination. Despite this effort of the Petitioner, the learned MM dismissed the complaint of the Petitioner for non-prosecution.

10. This Court finds merit in the argument of the Petitioner that the Complainant was present in-person on 31.10.2022 and was willing to undergo the cross-examination, which was to be conducted by the counsel for the Respondent. The presence of the counsel for the Petitioner, therefore, at that stage, was not mandatory. The learned counsel for the Petitioner further highlighted that the Petitioner neither



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sought an adjournment stating non-availability of his counsel nor requested that he would not be able to get himself cross-examined in the absence of his counsel.

11. In view of the foregoing discussion, as the Petitioner was present and willing to proceed with the cross-examination on 31.10.2022, and had not sought any adjournment despite the absence of his counsel, the impugned order dated 31.10.2022 is hereby set aside.

12. Moreover, the application of the Petitioner seeking waiver of the previously imposed cost of Rs. 3000/- is pending adjudication before the learned MM. The said application shall be decided on its own merits, in accordance with law.

13. The complaint of the Petitioner stands restored to its original number, and the matter is remanded back to the learned MM for conducting Trial, in accordance with law.

SHALINDER KAUR, J

MAY 9, 2025/KP

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