

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

Date of decision: 20th February, 2013

+ **CRL.M.C. 2566/2012**

ANKUR ARORA @ LUCKY Petitioner

Through: Mr. Pradeep Teotia, Adv.

versus

STATE (NCT OF DELHI) & ORS. Respondents

Through: Ms. Rajdipa Behura, APP for the State.
Mr. Vipin Kalra, Adv. for R-2 & R-3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Petitioner invokes the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for setting aside of the order dated 11.11.2011 passed by the learned Metropolitan Magistrate ('MM') whereby the Petitioner's complaint filed against Respondents No.2 and 3 for offences under Sections 323/341/506/34 of the Indian Penal Code (IPC) was dismissed in default. The Petitioner preferred a Revision Petition under Sections 397/401 Cr.P.C. before the learned Additional Sessions Judge ('ASJ') which came to be dismissed by an order dated 16.12.2011.
2. The ground taken up by the Petitioner for setting aside of the order dated 11.11.2011 is that on the earlier said date, the Petitioner (the Complainant

before the Trial Court) was present outside the Court and he had to suddenly leave the Court because of some urgent work. The Counsel for the Petitioner as well as his associate was informed by the Reader of the Court that the file was not traceable and that the case had already been adjourned. The associate counsel of the Petitioner's counsel reached the Court after lunch and she came to know that the Complaint was dismissed for non prosecution.

3. The Petition is opposed by Respondents No.2 and 3 stating that Respondent No.2 Dr. B.K. Gupta is a Medical Practitioner aged 67 years and Respondent No.3 Mohit Gupta is a specialized doctor working in Safdarjung hospital. They were falsely implicated in the criminal complaint. The facts alleged in the Petition were stated to be incorrect and malicious. It was thus stated that the Petitioner is not entitled to avail the discretionary power under Section 482 Cr.P.C.
4. As per Section 482 Cr.P.C. the powers under this Section can be exercised by the High Court to make (i) such orders as may be necessary to give effect to any order under this Code; (ii) to prevent abuse of the process of law; and (iii) otherwise to secure the ends of justice.
5. It is well settled that the inherent power of the Court under Section 482 Cr.P.C. are to be exercised sparingly in exceptional circumstances and not as a matter of course.
6. The Petitioner has not placed on record the orders dated 11.08.2011 and 20.09.2011 passed by the learned 'MM' prior to the passing of the order dated 11.11.2011. Certified copies of these orders (dated 11.08.2011 and 20.09.2011) have been placed on record by the Respondents No.2 and 3.

It would be apposite to extract the three earlier said orders hereunder:-

“11.08.2011

Present : None for the complainant.

I have perused the record. Perusal of record reveals that present case pertains to the territorial jurisdiction of PS Anand Vihar but same has been transferred to this Court by ld. ACMM(E).

Matter be put up for appearance of complainant and arguments on application u/s 156(3) Cr.P.C. on 20.09.2011.

20.09.2011

Present : None for the complainant despite repeated calls.

Yet, in the interest of justice, adverse order against the complainant is deferred till next date of hearing.

Matter be put up for appearance of complainant and further proceedings on 11.11.2011.

It is made clear that last and final opportunity is granted to the complainant to appear before the Court on the next date of hearing and pursue its case further failing which, it shall be presumed that complainant is not interested in pursuing its case further.

11.11.2011

Present : None for the complainant despite repeated calls since morning.

Perusal of the record reveals that present case had been received by way of transfer on 13.07.2011 and Ld. Counsel for the complainant appeared before the court on that day. Thereafter, complainant has not appeared before the court. Specifically, none has appeared on behalf of the complainant on 11.08.2011, 20.09.2011 and today too. On the last date of hearing, it was made clear that if complainant did not appear before the court, it should be presumed that complainant is not interested in pursuing his case further. Despite such direction, none has appeared on behalf of the complainant today.

Perusal of the record reveals that complainant has filed present case u/s. 200 Cr.P.C. along with an application u/s 156(3)

Cr.P.C. wherein he has leveled allegations of commission of offence of causing hurt, restrain and criminal intimidation against the accused persons.

From the above mentioned observations, it is clear that complainant is not interested in pursuing the present complaint case. Further, the submission of the complainant qua section 156 (3) Cr.P.C. cannot be decided without hearing his arguments. Hence, the application u/s. 156 (3) Cr.P.C. is dismissed for non-prosecution.

Moreover, complainant has not examined any witness in support of his allegations made in his complaint and even offered himself for examination qua proceedings u/s. 200 Cr.P.C. In these circumstances, there is no sufficient ground for proceeding; hence, present complaint is dismissed.”

7. It is thus apparent that as per the above stated orders none was present on behalf of the Petitioner on three continuous dates, that is, 11.08.2011, 20.09.2011 and 11.11.2011. Learned ‘MM’ while passing order dated 20.09.2011 specifically recorded that none had responded on behalf of the Complainant (i.e. the Petitioner) despite repeated calls. The learned ‘MM’ granted another opportunity for the Complainant to appear and pursue his complaint case. With regard to his absence on 20.09.2011, the explanation given by the Petitioner is that he was present in the Court and sought adjournment because of stomach ache but the Court did not listen to his request. It is further recorded that the Counsel for the Petitioner was busy in another case at Tis Hazari Courts.
8. As noticed earlier, the learned ‘MM’ did not adjourn the case simply on one call. He patiently waited for the complainant and his counsel and thereafter granted last and final opportunity to the complainant to appear before the Court on the next date. This should have been enough for the Petitioner to wake up from the deep slumber and to pursue his case. He

did not appear in the Court on the next date when the impugned order (dated 11.11.2011) was passed, again after waiting sufficiently for the complainant and his counsel. Again, the explanation given by the Petitioner is that he had to leave the Court because of some urgent work whereas his counsel was misinformed by the Reader of the Court that the file was not traceable and that the case has already been adjourned. The explanation given by the Petitioner regarding his own absence and the absence of his counsel is not believable. No Affidavit of the Counsel to the effect that he had contacted the Reader of the Court in the pre-lunch session or that he was informed by the earlier said Reader that the file was not traceable or that the same had already been adjourned, was filed with this Petition. Of course, an Affidavit of one Mr. Pradeep Teotia Advocate filed with the Revision Petition preferred before the learned 'ASJ' against the order dated 11.11.2011. In this affidavit there is no specific averment that he was present in the Court on the earlier said date or that the case was not called up or that the Reader of the Court misinformed him that the case had already been adjourned. I would have taken into consideration the Affidavit purported to be filed before the learned 'ASJ', provided it contained all the details. In the absence of any specific affidavit of the counsel it would be difficult to brush aside orders dated 20.09.2011 and 11.11.2011 wherein it is recorded that the Petitioner or his counsel failed to respond to the case despite repeated calls. The orders dated 11.08.2011, 20.09.2011 and 11.11.2011 in the circumstances cannot be disregarded with regard to the contents. The order reveals that the Complainant was completely careless and grossly negligent about pursuing his case.

9. In the circumstances, it would not be appropriate for this Court to

exercise its inherent powers to set aside the dismissal of the complaint in default which amounted to the discharge of the Respondents No.2 and 3.

10. The Petition is devoid of any merit; the same is accordingly dismissed.

G.P. MITTAL, J.

FEBRUARY 20, 2013

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