

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-A-795-MA-2013 (O&M)
Date of Decision: 11.05.2015**

Pradeep Thakran ... Applicant-appellant

Versus

State of Haryana and anr. ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajesh Lamba, Advocate
for the applicant-appellant.

Mr. Rajesh K. Sheoran, DAG, Haryana.

Mr. Atul Yadav, Advocate for
Mr. Maharaj Kumar, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J. (Oral)

In this appeal order dated 31.07.2013 passed by Judicial Magistrate 1st Class, Gurgaon has been assailed. On the date fixed none appeared before the trial Court and trial Court proceeded to dismissed the complaint for want of prosecution.

Learned counsel states that order dismissing the complaint in a summons case has the effect of acquittal and therefore, present petition in terms of Section 378 (4) is maintainable. Learned counsel for the petitioner has reproduced relevant interlocutory order preceding the date of dismissal of the complaint on 31.07.2013, showing that

applicant was duly represented by his counsel.

Learned counsel further states that on 31.07.2013, the case was fixed for securing the presence of the accused by means of coercive methods and in the event of his non-appearance, the Court should have proceed against him by issuing non-bailable warrants. Learned counsel relies upon provision in terms of Section 256 Cr.P.C to contend that in view of the fact that case was pending primarily to secure presence of accused by resorting to issuance of bailable warrants, the trial court is apparently not justified in resorting to such a harsh order of dismissal of the complaint for want of prosecution. The trial Court could have explored the possibility of either adjourning the case further or should have concluded whether the presence of complainant was necessary on the date fixed so as to take such a serious view in his absence which resulted in passing of impugned order. Apparently the date fixed was not a material date. Trial Court could have exercised its discretion to adjourn the case and also to secure presence of accused by means of non-bailable warrants. Learned counsel relies upon order dated 21.02.2007 passed in **CRM-M-35240 of 2005 Dilawar Singh Vs. Pankaj Joshi and anr. and 1998 (1) RCR (Criminal) 309 The Associated Cement Co. Ltd VS. Keshvanand** in which Hon'ble Apex Court as held in the following manner:-

“Reading the Section in its entirety would reveal that two constraints are imposed on the court for exercising the

power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the magistrate shall not acquit the accused. Second is, when the magistrate considers that personal attendance of the complainant is not necessary on that day the magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice”.

In view of facts and circumstances of the case, impugned order dated 31.07.2013 passed by Judicial Magistrate 1st Class, Gurgaon is set aside. Complaint is restored to its number.

Parties are directed to appear before the trial Court on 21.05.2015 for further proceedings.

(RAJ MOHAN SINGH)
JUDGE

May 11, 2015
prince