

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

CRM-A-1253-MA-2014 (O&M)

Date of Decision : 05.12.2015

Gurmit Singh

.....Appellant

Versus

Guru Dutt

.....Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. **Whether reporters of local newspaper may be allowed to see judgment?**
2. **To be referred to reporters or not?**
3. **Whether the judgment should be reported in the digest?**

Present : Mr. Sandeep Jain, Advocate
for the appellant.

None for the respondent.

FATEH DEEP SINGH, J. (ORAL)

CRM-24208-2015

In view of the averments made in the application, which is duly supported by an affidavit of the appellant, in the light of the settled position that a party should not be denied access to justice on hyper technical grounds and in the interest of justice taking a lenient view, delay of 59 days in filing the appeal is condoned.

The application stands disposed off, accordingly.

CRM-A-1253-MA-2014

Complainant-Gurmit Singh filed a complaint against respondent/accused-Guru Dutt under Section 138 of the Negotiable Instruments Act, 1881 (in short “the Act”) regarding dishonouring of a cheque amounting to Rs.45,000/- so issued by the accused in due acknowledgment and discharge of his liability towards the complainant.

The complainant closed his preliminary evidence on 2nd July, 2012 and after hearing orders of even date, the learned JMIC, SBS Nagar summoned the accused to face the trial under Section 138 of the Act. Thereafter, on 13th August, 2013, when the matter was adjourned to 6th September, 2013 for appearance of the complainant, the matter was transferred to the evening Court and bailable warrants of the accused were issued. Thereafter on 9th December, 2013, the case was again transferred to another evening Court and during all this intervening period inspite of coercive means having been adopted by the Court, the accused failed to put in appearance and, thus, proclamation in terms of Section 82 Cr.P.C. was issued. Thereafter, after two dates the matter was again transferred to another evening Court where it was taken up on 13th March, 2014. Impugned orders were passed dismissing the complaint in default for non-appearance of the complainant. The same has been the subject matter of challenge in this

appeal by the aggrieved complainant.

Heard. Sh. Sandeep Jain, Advocate for the appellant. Since, none has put in appearance on behalf of the respondent inspite of notice, the matter was disposed off in their absence. Perused the records of the case.

The only question that precipitates from the contentions of learned counsel for the appellant is whether it was judiciously permissible to have resorted to such an order ? Evidently, the complaint was filed on 28th February, 2011 and throughout 25 hearings, the complainant had been appearing spanning over a period of almost three years and the Court having recorded the preliminary evidence passed summoning orders against the accused finding prima facie allegations to summon him for the commission of this offence, and who apparently had been evading his appearance for almost a period of two years.

A similar preposition of law came up before the Hon'ble Apex Court in **The Associated Cement Co. Ltd. Versus Keshvanand, 1998(1) R.C.R. (Criminal) 309**, wherein their Lordships have made the following observations :-

.....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 the 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

The impugned order thus sufficiently reflects that there was no necessity for the presence of the complainant on

the date when the impugned order for dismissing in default was passed as it was the duty of the Court to have procured the presence of the accused in fulfillment of its summoning orders. Thus, to the mind of this Court, it was not appropriate and correct exercise of the powers envisaged under Section 256 Cr.P.C. Moreover, when the case has been transferred to another Court, it was the obligation of the Court to have ensured that the complainant has been given due notice of the transfer of his case to enable him to be present and not to act in haste axing the case of the complainant who has endeavoured all these years for getting justice. By doing so, the learned Court below has not only acted in a haste but has also denied due justice to the appellant.

Thus, in the totality of what has been detailed and discussed above, the present appeal is allowed and the impugned order is thus, set aside directing the Court below to restore the complaint and to proceed ahead into the matter as per law.

Keeping in view the delay that has been occasioned, the trial Court is directed to ensure speedy and expeditious disposal of the matter.

December 05, 2015
Dpr

(FATEH DEEP SINGH)
JUDGE