

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. A-1508-MA of 2014

DATE OF DECISION: 13.8.2015

Naresh Kumar Verma

.....Applicant

Versus

Divish Kumar

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Kunal Dawar, Advocate
for the applicant.

Mr. Manoj Kaushik, Advocate
for the respondent.

DAYA CHAUDHARY, J.

As per the case of the applicant, two cheques amounting to ₹ 1.5 lacs and ₹ 1 lac were issued by the accused-respondent in favour of applicant-complainant-Naresh Kumar Verma for discharge of legally enforceable liability. Said cheques were dishonoured on account of “insufficient funds”. A statutory notice was given by the applicant to the accused-respondent and thereafter a complaint was filed on 19.4.2011. On the same day, pre-summoning evidence was recorded and the respondent was summoned. The respondent appeared on 27.7.2011 and was released on bail, the offence being bailable. Thereafter, the case was first adjourned to 21.9.2011 and then to 2.12.2011, on which date, the Court was on leave and the case was again adjourned to 14.5.2012. On 14.5.2012, the notice of acquisition was served upon the respondent and

the case was adjourned to 12.9.2012. On that day, an application was moved for exemption by the accused-respondent, which was allowed and the case was adjourned to 25.9.2012. On 25.9.2012, since the accused-respondent did not appear, his bail was cancelled and warrants of arrest were issued against him for 23.10.2012. On 23.10.2012, again the Court was on leave and the case was adjourned to 18.1.2013, on which date also the Court was on leave and the matter was further adjourned to 15.2.2013. Subsequently, again on 15.2.2013, 11.3.2013 and 7.5.2013, the case was adjourned and thereafter on 26.7.2013 and 5.8.2013 an application for exemption was moved on behalf of complainant, which was allowed. Thereafter the case came up for hearing on 6.1.2014 and it was referred to Mediation and Conciliation Centre, Faridabad on the joint request made by counsel for the parties on the ground that there were chances of compromise. However, the compromise could not be effected between the parties and again the matter was adjourned on 22.2.2014 for cross-examination of deferred witnesses. Thereafter the case was adjourned on various dates and ultimately the case was fixed for hearing on 8.7.2014. On 8.7.2014, the complainant could not appear before the trial Court and the case was dismissed because of non-appearance of the complainant.

The present application for grant of leave to appeal has been filed by the applicant challenging order dated 8.7.2014.

Learned counsel for the applicant contends that the case of the applicant was dismissed in default which amounts to acquittal of the accused-respondent and as such the same is violative of mandatory provisions laid under Section 256 Cr.P.C.. Learned counsel further contends that instead of dismissing the complaint in default, the Court should have issued notice to counsel for the complainant. Although the provisions of Section 256 Cr.P.C. are not mandatory but they are directory

in nature as has been held in the case of **K. Mohanan Vs. Ms. Saraswathy** 2013 (4) RCR (Criminal) 864. Learned counsel also contends that the complainant cannot be made to suffer for the negligence on account of his counsel as the order of dismissal in default amounts to acquittal of respondent in terms of Section 256 Cr.P.C. Learned counsel has also relied upon the judgment in the case of **Kulwant Singh Vs. Baihar Singh** 2007 (1) RCR (Criminal) 283, in support of his contentions.

Learned counsel for the respondent submits that the complaint was quite old and the case was adjourned on various occasions. Even on 8.7.2014, when the case was called, counsel for the complainant was not present and it was passed over. Thereafter again the counsel for the complainant was not present and the case was dismissed in default.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file as well as zimni orders on record.

Admittedly, two cheques issued by the accused-respondent in favour of the complainant-applicant were dishonoured on account of "insufficient funds". It is also an admitted case of the parties that after giving statutory notice, complaint was filed on 19.4.2011 and pre-summoning evidence was recorded on the same day and the respondent was summoned. The respondent appeared before the trial Court and was admitted on bail. The case was adjourned on various dates as either the Court was on leave or some request was made. Thereafter, the case was adjourned on the ground that there was a possibility of compromise between the parties. On 8.7.2014, none was present for the complainant and ultimately the complaint was dismissed for want of prosecution on that very day, which resulted into acquittal of the accused-respondent. Section 256 Cr.P.C. is relevant for resolving the controversy in hand, which is

reproduced as under:-

256. Non-appearance or death of complainant.-(1) If the summons have been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day;

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

As per provisions of Section 256 Cr.P.C., the Magistrate has the discretion to acquit the accused by resorting to the provisions of Section 256 (1) for non-appearance of the complainant or his counsel but the learned Magistrate must be cautious while passing such order of acquittal due to non-appearance of the complainant or his counsel as the provisions of Section 256 (1) of the Cr.P.C. are directory in nature and may not be mandatory in character as has been held in **Mohanan's case (supra)**.

Even the absence of complainant or his counsel on the date of hearing cannot be the reason for acquitting the accused in a routine manner as it is considered as short cut method of acquittal or disposal of

the case, which cannot be resorted to either as a matter of course or as a matter of routine. The complainant cannot be made to suffer due to the negligence on account of his counsel as has been held in **Kulwant Singh's case (supra)**. Similarly, dismissal of complaint under Section 138 of the Negotiable Instrument Act after summoning of the accused, amounts to acquittal of the accused in terms of Section 256 Cr.P.C.

Similar view has been taken by Hon'ble the Apex Court in the case of **The Associated Cement Co. Ltd. Vs. Keshvanand** 1998 (1) RCR (Criminal) 309, by Delhi High Court in the case of **Krisan Kumar Gupta Vs. Mohammed Jaros and another** 2003 (1) RCR (Criminal) 127, by Bombay High Court in the case of **Kuppaiyandu Muthu Rajan Vs. Dhanraj H. Rathod** 2011 (7) RCR (Criminal) 1909 as well as by this Court in the cases of **Punjab State Civil Supplies Corporation Ltd. Vs. Mangat Rai** 2002 (4) RCR (Criminal) 458 and **Santosh Devi Vs. Mahinder Singh** 2015 (2) RCR (Criminal) 192.

In view of the above, there is merit in the contentions raised by learned counsel for the applicant and the application deserved to be allowed. Accordingly, order dated 8.7.2014 dismissing the complaint for want of prosecution is set aside and the trial Court is directed to hear the case from the stage it was dismissed in default. Both the parties are directed to remain present before the trial Court on 31.8.2015.

August 13, 2015
pooja

(DAYA CHAUDHARY)
JUDGE

