

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

CRM-M-31383-2009 (O&M)
Date of decision : 02.02.2015

Haryana Minerals Limited

...Petitioner

Versus

Raj Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Mahabir Singh Sindhu, Advocate,
for the petitioner.

Mr. R.S. Sihota, Sr. Advocate,
with Mr. B.R. Rana, Advocate,
for the respondent.

JITENDRA CHAUHAN, J. (Oral)

The petitioner is aggrieved against the order dated 23.07.2008, passed by the learned Judicial Magistrate 1st Class, Faridabad, dismissing the complaint filed by the petitioner bearing No.747 of 1998, for want of prosecution.

In brief, the case of the petitioner is that the accused-respondent embezzled a huge amount and FIR No.331 of 1998, under Section 409 of the Indian Penal Code, was registered against him at Police Station, NIT, Faridabad. The respondent admitted his liability and in order to discharge the same, he issued four cheques in favour of

the petitioner. When presented, the same were returned back for want of sufficient funds. A legal notice dated 06.10.1998, was issued to the respondent. Thereafter, the petitioner preferred a complaint under Section 138 of the Negotiable Instruments Act, against the respondent and after recording preliminary evidence, the learned Court summoned the respondent. On 23.07.2008, when the matter came up before the learned JMIC, Faridabad, the representative of the petitioner, Shri S.K. Jain, Extension Officer (Inds.), could not attend the proceedings and the complaint was dismissed for want of prosecution. On 11.08.2008, the petitioner moved an application for restoration of the complaint, wherein, notice was issued for 23.08.2008. However, on realizing that the application for restoration would not be maintainable before the learned JMIC, Faridabad, having become functus officio after passing the impugned order dated 23.07.2008, the present petition was filed before this Court.

It is contended on behalf of the petitioner that the absence of the official representing the complainant-petitioner on 23.07.2008, was unintentional and beyond his control as he was held up in a traffic jam. The learned Court below wrongly dismissed the complaint for solitary non-appearance of the complainant.

On the other hand, the learned counsel for the respondent contends that for the same offence, the accused-respondent already stands acquitted in FIR case vide judgment dated 06.11.2009, as the

prosecution failed to lead any evidence against him. Therefore, the continuance of proceedings in the present complaint would amount to double jeopardy. He cites ***Lekh Raj Vs. Pardeep Sharma, 2003(3) R.C.R. (Criminal) 637;*** and ***Jitender Bajaj Vs. State (U.T. Chandigarh) 2005(3) R.C.R. (Criminal) 69.***

Heard.

It is the specific stand of the petitioner that after having admitted the liability in FIR No.331/1998, the accused respondent issued four cheques in favour of the petitioner-complainant amounting to Rs. 8,20,000/-. The present complaint is with regard to the dishonour of the abovesaid cheques. Therefore, the effect of acquittal of the respondent in FIR under Sections 409, 120-B IPC, wherein, the prosecution failed to lead any evidence against the accused, would be considered by the trial Court, at appropriate stage. As regards the impugned order dated 23.07.2008 is concerned, the complainant in the present case is a Public Sector Undertaking of the State of Haryana. As per the impugned order, the official deputed to pursue the matter on its behalf absented without sending any request or intimation in this regard. The learned counsel appearing on behalf of the complainant had also pleaded no instructions. However, non-suiting the petitioner on account of his absence on one date appears to be too harsh a punishment. Similar view has been taken by this Court in ***Purushotam Mantri Vs. Vinod Tandon @ Hari Nath Tandon, 2009(1) R.C.R.***

(Criminal) 442, wherein, it has been held as under:-

“7. If the facts of the present case are examined, it would be too harsh on the petitioner to non-suit him merely for his non-appearance on one date. The Courts are not to dispense justice with closed eyes. Here is a case where the petitioner filed three complaints against respondent but was not able to serve him as he is based in Kolkata. He could not even find details of his property after the respondent was declared as proclaimed offender. However, merely because of his non-appearance on one date, his complaints were dismissed. The net effect of the entire proceedings is that it is the petitioner/complainant who has been punished as against respondent, who had been successfully evading service of summons and appearance before the Court to face trial.”

The judgment of acquittal dated 06.11.2009 in State Vs. Raj Kumar, FIR No.331 dated 20.04.1998, under Sections 409, 120-B IPC, P.S. NIT Faridabad, goes to show that the prosecution had not produced any evidence to prove charge against the accused despite availing sufficient opportunities. Therefore, accused Raj Kumar was

acquitted of the charge. It is painful to observe that the concerned officials of the petitioner adopted a casual approach in prosecuting the cases against Raj Kumar, accused, for the reasons best known to them.

Keeping in view of the above and in the interest of justice, the present petition is allowed and the impugned order dated 23.07.2008, dismissing the complaint for want of prosecution is hereby quashed. Criminal Complaint No.747 of 1998, titled as “Haryana Minerals Limited Vs. Raj Kumar”, under Section 138 of the Negotiable Instruments Act, is restored to its original number and the case is remanded back for decision on merits. However, the same shall be subject to payment of cost of Rs.25,000/-, to be recovered from the official entrusted with the responsibility of pursuing the matter before the Court, namely, Shri S.K. Jain, to be deposited with the Chairman, District Legal Services Authority, Haryana at Faridabad, within one month from the date of receipt of a certified copy of this order.

Parties through their counsel are directed to appear before the Court of Chief Judicial Magistrate, Faridabad, on 06.04.2015, who will either decide the case himself/herself or entrust it to the competent Court of jurisdiction for disposal according to law.

Allowed.

02.02.2015
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(JITENDRA CHAUHAN)
JUDGE