

In the High Court of Punjab and Haryana at Chandigarh

**CRM-M-33416 of 2010
Date of Decision: 12.01.2015**

Axis Bank

---Petitioner

versus

Balbir Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Harsh Aggarwal, Advocate
for the petitioner**

None for respondents No. 1 and 2

**Mr. Ankur Jain, AAG, Punjab
for the respondent-State**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporter or not?**
- 3. Whether the judgment should be reported in the Digest?**

REKHA MITTAL, J.

The present petition under Section 482 of the Code of Criminal Procedure has been directed against orders dated 6.1.2010 (Annexure P-2) and 17.8.2010 (Annexure P-4) passed by the trial court whereby the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (in short “the Act”) was dismissed.

Axis Bank Limited through its authorised representative filed the complaint in regard to dishonour of cheque allegedly issued by the respondent in discharge of his legally enforceable liability. The complaint

was filed in the year 2008 and after conducting preliminary enquiry, the accused were ordered to be summoned. On 6.1.2010, as neither the complainant nor his counsel was present in the Court, the same was dismissed for want of prosecution. The application filed by the complainant for restoration of the complaint also came to be dismissed by the court vide order dated 17.8.2010.

Counsel for the petitioner contends that on 6.1.2010, the date on which the complaint was dismissed for want of prosecution, the case was fixed for securing presence of the accused through non-bailable warrants. It is further argued that on 30.7.2009, the complainant and his counsel wrongly noted the date as 16.1.2010 and for that reason neither the complainant nor his counsel appeared in the court resulting in termination of the proceedings which has caused serious prejudice to the rights of the complainant and enured to the benefit of the accused who had been avoiding process issued by the Court. It is further submitted that the learned trial court has not adverted if presence of the complainant on 6.1.2010 was necessary for progress in proceedings or could be dispensed with. It is further argued that keeping in view the principle of natural justice that no one should be condemned unheard coupled with the factum that the entire effort of the complainant to bring the proceedings to its logical end would be rendered negatory in case the impugned orders are not set aside, the petition may be allowed and the trial court may be directed to conduct the proceedings from the stage, the complaint was ordered to be dismissed.

No one has put in appearance on behalf of respondents No. 1 and 2 despite service. There is no counter to the submissions made by

counsel for the petitioners.

I have heard counsel for the parties and perused the records.

The dismissal of the complaint for want of prosecution, in the circumstances of the present case has resulted in acquittal of the accused and, therefore, the petitioner was entitled to challenge the order by seeking leave to appeal under Section 378(4) of the Code of Criminal Procedure (in short Cr.P.C”).

The question now arises for adjudication is whether the complainant can file a petition under Section 482 Cr.P.C. seeking setting aside order of dismissal or say it differently, restoration of the complaint dismissed in default. The controversy is squarely covered by judgment of the Hon'ble Supreme Court of India in *Punjab State Warehousing Corporation Fridkot vs. M/s Shri Durga Ji Traders and others, 2012(1) R.C.R.(Criminal) 358*, judgments of this Court *Om Parkash vs. M/s Golden Forest India Limited and others, 2008(4) R.C.R.(Criminal) 445* and *Chander Dev vs. Raj Kumar Bhatia decided on 11.12.2013 (CRM-No. 11.12.2013*

So far as the facts of the case in hand are concerned, the complaint was filed in the year 2008. The accused were ordered to be summoned after recording evidence during preliminary enquiry. The presence of the accused was being secured through coercive process by way of non-bailable warrants. There is nothing on record to suggest that the complainant earlier also absented from the proceedings much less his conduct is deficit in any manner whatsoever. In case, the order dated 6.1.2010 passed by the trial Magistrate is not set aside, the complainant

would be deprived of an opportunity of being heard on merits of the controversy and the accused would escape their liability by keeping themselves away from judicial process. The petitioner has tendered a satisfactory explanation as to the circumstances under which the authorised representative of the banking company or its counsel could not appear before the trial Magistrate on 6.1.2010. The application filed by the petitioner seeking restoration of the complaint further substantiates its plea that absence from the proceedings was not willful or intentional but due to justifiable reason. This apart, as the proceedings were pending for securing presence of the accused through warrants, personal appearance of the complainant was not necessary for progress in the proceedings. The learned trial Magistrate neither examined nor recorded any reasons if personal appearance of the petitioner could not be dispensed with on 6.1.2010, in the light of judgment of the Hon'ble Supreme Court of India *The Associated Cement Company Limited vs. Keshvanand 1998(1) RCR(Criminal) 309*.

In view of the foregoing discussion, the petition is partly allowed. As a consequence, order dated 6.1.2010 (Annexure P-2) is set aside and the complaint filed by the petitioner is ordered to be restored to the stage at which it was dismissed by the trial court.

The petitioner through its counsel is directed to appear before the trial court on 3.3.2015.

(REKHA MITTAL)
JUDGE

12.01.2015

PARAMJIT