

237

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

CRM-M-36442 of 2013

Date of decision: February 20, 2015

Braham Prakash

.....Petitioner

Versus

Sri Bhagwan

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

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

Mr. Tapan Yadav, Advocate
for the respondent.

SABINA, J

Petitioner has filed this petition challenging the order dated 01.05.2013, whereby complaint filed by the petitioner, was dismissed in default.

Learned counsel for the petitioner has submitted that Lekh Ram had filed complaint against the respondents under Sections 420, 120-B of Indian Penal Code, 1860. During the pendency of the complaint Lekh Ram died on 08.01.2010. Petitioner was brought on record to pursue the complaint being legal representative of complainant Lekh Ram. Vide order dated 28.02.2013 (Annexure P-4), case was adjourned to 04.03.2013 for pre-charge evidence. However, on 02.03.2013, case was taken up by the Presiding Officer and it was ordered that the file be sent to the Court of Chief Judicial Magistrate, Gurgaon for sending the same to Pataudi

Court. Vide order Annexure P-6, parties were directed to appear before the Court at Pataudi on 22.03.2013. However, on 22.03.2013, none had appeared before the Court at Pataudi and notices were ordered to be issued to the parties. From Annexure P-8, notice issued to the complainant, it was evidence that the notice was issued to Lekh Ram and as per the report of the process server, the notice had been received by the son of Lekh Ram. Notice was required to be issued to the petitioner as he had been brought on record to pursue the complaint after the death of complainant-Lekh Ram. Ajit, who had allegedly signed the summons, was not the son of Lekh Ram. Thus, the petitioner could not appear before the Court on 01.05.2013 as he had not received the requisite summons in this regard. The complaint was liable to be restored to its original number as the absence of the complainant before the trial Court was not intentional.

Learned counsel for the respondent, on the other hand, has opposed the petition and has submitted that the petitioner had failed to appear before the trial Court and the trial Court was left with no other alternative but to dismiss the complaint in default.

In the present case, admittedly, after the death of complainant Lekh Ram, petitioner was brought on record as his legal representative, to pursue the complaint. Lekh Ram had died on 08.01.2010.

Order dated 02.03.2013 (Annexure P-6), reads as under:

“The present complaint pertains to the Police Station Pataudi. In view of order dated 17.01.2013 passed by learned District and Sessions Judge, Gurgaon, the present case be sent to the court of learned SDJM, Pataudi for 22.03.2013. Parties along with their counsel is directed to appear before the court of learned SDJM, Pataudi on the date fixed at 10.00 a.m.”

Order dated 22.03.2013 (Annexure P-7), reads as under:-

“File received by way of transfer. It be checked and registered.

Case called several times isnce morning, but none appeared. It is already 3.40 p.m. No further wait is justified. In the interest of justice, court notice to parties/accused and their counsel be issued for 01.05.2013.”

Order dated 01.05.2013 (Annexure P-10), reads as under:-

“Today the case was fixed for notice to parties. Case called several times since morning but none on behalf of complainant appeared. It is already 2.30 p.m. No further wait is justified. Now, the case is dismissed in default. File be consigned to record after due compliance.”

Thus, vide order Annexure P-7, notices were ordered to be issued to the parties to appear before the Court on 01.05.2013. Annexure P-8 is the summons issued to Lekh

Ram. It appears that at the time of issuance of summons, it had not been noticed by the *Ahlmad* of the Court that Lekh Ram had already died and petitioner had been brought on record as his legal representative to pursue the complaint and the notice was required to have been issued to the petitioner. Since notice was not issued to the petitioner to appear in the Court on 01.05.2013, the absence of the petitioner before the trial Court on 01.05.2013, cannot be said to be intentional or malafide. It was not brought to the notice of the Court when it passed the order dated 01.05.2013 that petitioner had not been served the notice issued in pursuance to the order dated 22.03.2013. Presuming that the complainant had been served and had failed to appear despite service, the trial Court had dismissed the complaint in default. The said presumption was factually incorrect.

Hence, in the facts and circumstances of the present case, the impugned order dated 01.05.2013, is liable to be set aside.

Accordingly, this petition is allowed. Impugned order dated 01.05.2013 is set aside. Complaint in question is restored to its original number and the trial Court is directed to proceed further with the complaint in accordance with law.

**(SABINA)
JUDGE**

February 20, 2015

m.singh