

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-37869 of 2012 (O&M)
Date of Decision: February 21, 2015

Shishan Kumar Aggarwal @ Shishan Kumar Mangla

...Petitioner

VERSUS

HDFC Bank Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Pavan Malik, Advocate
for the petitioner.

Mr.Vishal Goel, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of judgment dated 06.10.2012 passed by learned Addl. Sessions Judge, Gurgaon, setting aside the order dated 12.11.2011 and directing learned trial Court to restore the complaint to its original number.

It is mainly stated in the petition that petitioner is innocent and by this present petition, seeks quashing of the judgment dated 06.10.2012 whereby, learned Addl. Sessions Judge, Gurgaon, set aside the order dated 12.11.2011 and directed learned trial Court to restore the complaint to its original number. It is also stated in the petition that complaint was filed by the respondent against the

petitioner and Bank un-represented and consequently, complaint was dismissed for non-prosecution on 12.11.2011. This order was challenged by the bank by way of revision but was later on considered as an appeal and the order dated 12.11.2011 was set aside by learned Addl. Sessions Judge, Gurgaon, vide judgment dated 06.10.2012. It is further stated that the impugned judgment is liable to be quashed as the Sessions Court had no jurisdiction/power to set aside the order which amounted to acquittal and the power is vested only with this Court.

Notice of motion was issued in this case and learned counsel for respondent appeared and contested this petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that Annexure P-1 is the order dated 12.11.2011 passed by learned JMJC, Gurgaon, which reads as under:-

*“Present: None for the complainant.
Accused on bail with Sh.Vipin Gupta, Adv.*

*Today the case was fixed for filing of rely and consideration on the application for stopping the proceedings of the case. Case has been called several times since morning but neither the complainant nor anyone on behalf of the complainant has come present. It is already 3.40 P.M. Further wait is not justified. It seems that complainant is not interested in pursuing the present complaint. In these circumstances, present complaint is hereby dismissed in default for want of prosecution. Accused is discharged. His bail, and surety bond are discharged. File be consigned to the record room after due compliance.
Announced.
12.11.2011”*

The perusal of order dated 12.11.2011 shows that absence of the complainant Bank was only on one date and the case was fixed for filing reply of the application filed by the accused. The perusal of this order also shows that case number has been mentioned as 1929/15.07.09, which means that this complaint was pending before the trial Court for the last more than two years. It is now settled law that absence of complainant on one date, cannot be held as fatal to the case of the complainant. The Magistrate should not have dismissed the complaint only due to one default, especially, when the complainant is regularly appearing for the last more than two years. In the order, nothing has been mentioned that the complainant earlier also absented from the proceedings etc. or intentionally committed default to delay the proceedings. It is settled law that Court should do substantial justice between the parties and should not go into the technicalities of law. If, this order would not have been recalled or set aside, then the complainant would have suffered loss and serious prejudice would have been caused to him. There is nothing on the record to show that the complainant by his absence, is benefited in any way. Nothing is there or pointed out that this absence was intentional. So, the order passed by learned Judicial Magistrate Ist Class, Gurgaon is to be set aside and the complaint should be decided on merits. As in the order dated 12.11.2011, the Court has not acquitted the accused, rather discharged him, therefore, the revision has been filed before the Sessions Court. Against the order of discharge, revision is maintainable but as per Section 256 Cr.P.C.,

if the complaint is dismissed for non-appearance of the complainant after summoning order has been passed, then it amounts to acquittal of the accused. Learned Addl. Sessions Judge, Gurgaon has no power to hear the appeal in the complaint case against acquittal. This petition has been filed by the accused-petitioner to set aside that judgment passed by learned Addl. Sessions Judge, Gurgaon as the same has been passed without jurisdiction as he cannot hear the appeal or revision against acquittal in the complaint case but this Court under Section 482 Cr.P.C. can pass any order to secure the ends of justice.

As already discussed, the order passed by learned JMIC, Gurgaon amounts to miscarriage of justice and that order should not have been passed on single default of the complainant and that order is liable to be set aside and the rights of the parties are to be determined on merits. As per the judgment passed by the learned Addl. Sessions Judge Gurgaon, the complaint has been restored and the proceedings are going on. It is only a technical defect that learned Addl. Sessions Judge has passed the judgment of recalling the order passed by learned JMIC, Gurgaon.

But as discussed above, this Court has also considered the whole matter and is of the view that the order passed by learned JMIC, Gurgaon is to be recalled and the complaint should be decided on merits. After reaching to this conclusion, no purpose will be served by setting aside the proceedings already going on before the Magistrate and then to direct the complainant to file a petition under

Section 482 Cr.P.C. or under Section 378(4) Cr.P.C.

In view of the above discussion, the present petition is dismissed accordingly.

February 21, 2015
Vgulati

(INDERJIT SINGH)
JUDGE