

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

Crl. Misc. No. M-40355 of 2013

Date of decision: 30.09.2015

Maninder Singh

...Petitioner

Versus

Satbirpaul Singh Sandhu and another

..Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present: Mr. Rahul Sharma, Advocate,
for petitioner.

Mr. Sanjiv Ghai, Advocate,
for respondent No.1.

Mr. A.S.Kler, DAG, Punjab.

SHEKHER DHAWAN, J.

Present petition under Section 482 Cr.P.C. for setting aside/quashing the order dated 11.11.2013 passed by Judicial Magistrate 1st Class, Ludhiana vide which the application filed by petitioner for dismissal of the complaint bearing No.704/2 dated 12.11.2010 titled as “Satvir Paul Singh Sandhu Vs. Maninder Singh” has been dismissed.

Learned counsel for the petitioner submitted that respondent/complainant filed the above captioned complaint against present petitioner under Section 138 of Negotiable Instruments Act on 12.11.2010.

During October 2013, the petitioner came to know that respondent/complainant was arrested and some criminal case i.e. FIR

No.64/2013 under Section 302 of IPC registered at Police Station Dugri, Ludhiana and was lodged in Central Jail, Ludhiana since then. However, the presence of complainant was being marked by the trial Court on each and every date without his actual appearance. Petitioner moved application on 30.10.2013 for dismissal of the complaint. Reply to the application was filed. Counsel for complainant admitted the fact regarding confinement of complainant in Central Jail, Ludhiana since 12.08.2013 and the fact that no exemption application was filed. The application filed by the petitioner was dismissed with a cost of ₹1500/- upon the complainant for misleading the Court for not informing about the arrest of the complainant in another case.

Learned counsel for the petitioner submitted that trial Magistrate failed to appreciate the fact brought on record. The complainant was lodged in Central Jail in some other case but had not informed the Court and the complaint was liable to be dismissed as per provisions of Section 256 of Code of Criminal Procedure but still the prayer was not accepted and application was dismissed.

Learned counsel for respondent/complainant submitted that complainant was confined in Central Jail, Ludhiana in some other case and he had informed his counsel as he was in custody in some other case. He was not in a position to move any application for seeking exemption or inform the Court about his confinement. The circumstances were beyond his control. But there is no illegality in the order under challenge and petition be dismissed.

Having considered the above facts that complainant was lodged in Central Jail, Ludhiana in some other case during period from 12.08.2013

complainant while recording zimni orders dated 12.08.2013, 27.08.2013, 17.09.2013, 30.09.2013, 09.10.2013, 15.10.2013 and 25.10.2013. Respondent complainant cannot be held liable for recording his presence by trial Magistrate on above mentioned dates. The presence of complainant was not required on above mentioned dates because his statement as complainant had already been recorded and even witnesses to be examined on his behalf had already been examined and thereafter case was fixed for recording statement of accused under Section 313 Cr.P.C. and for leading defence evidence. That way order passed by Magistrate, dated 11.11.2013 does not call for any interference because trial Magistrate rightly considered the fact that personal presence of complainant was not required on above mentioned dates and non-filing of application for exemption by complainant is not a good ground to dismiss the present complaint at that stage.

Present petition being without any merit and same stands dismissed.

September 30, 2015

msd

**(SHEKHER DHAWAN)
JUDGE**