

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-40878 of 2014
Date of Decision: 10.02.2015

Daya Nand

---Petitioner

versus

Niranjan Lal Soni

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Atul Yadav, Advocate
for the petitioner

None for the respondent

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 has been directed against the order dated 27.10.2014 passed by the trial court whereby the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (in short “the Act”) has been dismissed for want of prosecution.

Counsel for the petitioner contends that complaint under the Act was filed in regard to dishonour of cheque bearing No. 414390 dated 16.2.2013 for a sum of Rs. 4,80,000/- due to “funds insufficient”. The respondent/accused failed to pay the cheque amount despite receipt of legal notice.

Counsel has argued that after recording of evidence during

preliminary enquiry, the accused was ordered to be summoned. On 19.10.2014 the court issued notice for service of the accused for 27.10.2014, but the petitioner could not appear on that date as he was advised bed rest with effect from 25.10.2014 to 29.10.2014 by Dr. B.L.Goyal of Dr. Goyal Hospital and Nursing Home, Rewari. It is further argued that as on 27.10.2014, the case was fixed for securing presence of the accused, therefore, personal appearance of the complainant was not necessary for progress in proceedings. The learned trial court did not advert to the fact if personal appearance of the complainant could be dispensed with on 27.10.2014 but straightway passed the impugned order causing serious prejudice to the petitioner by depriving him to be heard on merits of the case and enuring to benefit of the accused who had not even put in appearance in the proceedings. It is argued that the impugned order may be set aside as it has resulted in miscarriage of justice.

The respondent failed to appear in the court despite service, therefore, there is no counter to averments set up in the petition and arguments advanced by counsel for the petitioner.

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

The petitioner filed the complaint under Section 138 of the Act in May 2013 in which the respondent-accused was ordered to be summoned to face proceedings. Perusal of zimni order recorded by the learned trial court on 9.10.2014 would make it apparent that the case was pending for securing presence of the accused and the Ahlmad of the Court had not issued necessary process returnable for 29.10.2014. On that date, fresh process was ordered to be issued for presence of the accused on

27.10.2014. Unfortunately, on that date, neither the petitioner nor his counsel appeared resulting in axing of the criminal proceedings. The learned trial Magistrate did not advert to the question if personal appearance of the complainant was necessary or could be dispensed with in the context of observations made by the Hon'ble Supreme Court of India in *The Associated Cement Company Limited vs. Keshvanand 1998(1) R.C.R. (Criminal) 309*. This apart, there is nothing on record to suggest that the petitioner/complainant earlier also absented from the proceedings much less his conduct lacked bona fide. In case the order passed by the trial Magistrate is not set aside, the entire effort of the petitioner to bring criminal proceedings to its logical end would be rendered negatory and he would be condemned unheard without an opportunity to seek adjudication on merits of the controversy. On the other hand, a single default on the part of the complainant would enure to benefit of the accused in escaping his liability, subject matter of criminal proceedings. Even otherwise, there is nothing on record to doubt plea of the petitioner that due to illness and treatment in different hospitals, he was rendered helpless to pursue the proceedings. In this view of the matter, I am of the considered opinion that the impugned order dated 27.10.2014 cannot be allowed to sustain and accordingly set aside.

For the reasons aforesaid, the petition is allowed, order dated 27.10.2014 is set aside and the criminal proceedings are restored at the Board of the trial court at the stage at which the same were dismissed for

non-prosecution.

10.02.2015

PARAMJIT

(REKHA MITTAL)
JUDGE