

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No.M-4242 of 2014 (O&M)

Date of decision: 09th January, 2015

Chandan Kumar

...Petitioner

Versus

Rasaal Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Vishal Munjal, Advocate,
for the petitioner.

Mr. S.S.Goraya, Advocate,
for the respondents.

INDERJIT SINGH, J.

Petitioner Chandan Kumar has preferred this petition under Section 482 Cr.P.C. for quashing of the order dated 04.10.2011, passed by the learned Sub Divisional Judicial Magistrate, Pathankot vide which, on account of his absence as well as absence of his counsel, complaint No.19/1 dated 05.02.2009 titled as Chandan Kumar versus Rasaal Chand and others, was dismissed in default.

Notice of motion was issued. Learned counsel for respondents 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 in the present case, summoning order has not been passed so far. The complaint was

filed in the year 2009. The preliminary evidence was closed in October, 2010 and after that complaint remained pending for consideration. On 04.10.2011, none appeared on behalf of the complainant and the complaint was dismissed in default. All the zimni orders of the case have been placed on record which show that complainant was appearing before the learned Court below continuously for the last so many dates. It is in the present petition that complainant immediately filed application No.4437 dated 17.10.2011 for issuing certified copy of the impugned order. The file was not traceable. When the file was traced, complainant again, filed an application for issuing certified copy of the said order on 13.11.2013 and after receiving the copy of the impugned order, he filed this petition.

In view of the averments, made in the petition, it is clear that there is no willful intention on the part of the complainant-petitioner to delay the proceedings of the complaint. There is nothing on the record to show that the complainant was interested in delaying the proceedings. Summoning order has not been passed so far and the learned trial Court had been adjourning the case for consideration for the last more than 1 year. After recording the preliminary evidence of complainant, absence of complainant on one date cannot be held as fatal to his case. The Court is to do substantial justice between the parties and not to go to the technicalities of law. If the impugned order is not set aside, the

complainant will suffer irreparable loss.

Keeping in view the facts and circumstances of the case, the present petition is accepted and the impugned order dated 04.10.2011 is set aside. Complaint is restored to its original number. Learned trial Court is directed to proceed further as per law with the same.

09th January, 2015
mamta

(INDERJIT SINGH)
JUDGE