

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-842 of 2014 (O&M)
Date of decision: December 18, 2015

Vandana Aggarwal

...Petitioner

Versus

Arun Jain and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Pratibha Yadav, Advocate
for the petitioner.

Mr.Sandeep Moudgil, Advocate
for respondent No.1.

Mr.Pawan Kumar Jhanda, Asstt. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of order dated 08.01.2013 (Annexure P-8) passed by learned Sessions Judge, Gurgaon, orders dated 29.04.2013 and 01.06.2013 (Annexures P-9 and P-10) passed by learned JMIC, Gurgaon and order dated 17.10.2013 (Annexure P-12) passed by learned Addl. Sessions Judge, Gurgaon.

Notice of motion was issued and learned State counsel as well as learned counsel for respondent No.1 appeared and contested the petition.

I have heard learned counsel for the parties as well as

learned State counsel and have gone through the record.

From the record, I find that Annexure P-8 is the order dated 08.01.2013 passed by learned Sessions Judge, Gurgaon. This order has been passed in appeal filed against the order dated 17.09.2012 passed by learned JMIC, Gurgaon, vide which the criminal complaint under Section 138 of the Negotiable Instruments Act etc. was dismissed for want of prosecution after summoning of the accused. Vide this order i.e. 08.01.2013, the appeal was accepted and the order dated 17.09.2012 was set aside and the complaint was restored to its original number for further proceedings in accordance with law. Annexure P-9 is the order passed on the application under Section 319 Cr.P.C. As per order dated 01.06.2013 (Annexure P-10), notice to accused Vandana Aggarwal was issued. Annexure P-12 is the order dated 17.10.2013 passed in criminal revision filed by Vandana Aggarwal against the summoning order under Section 319 Cr.P.C.

From the record, I find that the complaint was filed by the complainant under Section 138 of the Negotiable Instruments Act etc., which was dismissed for want of prosecution by learned JMIC, Gurgaon vide order dated 17.09.2012. The perusal of the interim order (Annexure P-7) shows that the complaint was dismissed for want of prosecution after passing of the summoning order. If the complaint is dismissed after passing the summoning order for absence of the complainant, then as per Section 256 Cr.P.C., it amounts to acquittal of the accused. The appeal in a complaint case

against acquittal of the accused lies before this Court after seeking leave to appeal under Section 378(4) Cr.P.C. No appeal lies in a complaint case against acquittal before the Sessions Court as per provisions of Cr.P.C. Therefore, the order dated 08.01.2013 passed by learned Sessions Judge, Gurgaon in appeal against acquittal in a complaint case is beyond jurisdiction, illegal, null and void.

As the order dated 08.01.2013 restoring the complaint is illegal, therefore, all the subsequent proceedings and orders passed by learned JMJC, Gurgaon in pursuance of the restoration of the complaint, are also illegal and liable to be set aside.

Therefore, finding merit in the present petition, the same is allowed. The orders Annexure P-8 to P-10 and P-12 are hereby quashed.

However, the complainant can file the application under Section 378(4) Cr.P.C. seeking leave to appeal, if so advised, against the order dated 17.09.2012.

December 18, 2015
Vgulati

(INDERJIT SINGH)
JUDGE