

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

CRM-A No.632-MA of 2014

Date of decision: 17th February, 2016

M/s RPS Infrastructure Limited

... Appellant

Versus

M/s KST Infrastructure Limited and another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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| 1. | Whether Reporters of Local Newspapers may be allowed to see the judgment? | Yes |
| 2. | Whether to be referred to the Reporters or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Girish Agnihotri, Senior Advocate with
Mr. Saurabh Gulia, Advocate
for the appellant.

Mr. KP Singh, Advocate for the respondents.

FATEH DEEP SINGH, J.

This is an appeal by the complainant/appellant who is wholly aggrieved over the orders dated 18.02.2014 passed by the Court of learned Judicial Magistrate 1st Class, Faridabad whereby the complaint of the complainant stood dismissed in default for want of prosecution on account of non-appearance of the complainant and his counsel on that date.

Complainant M/s RPS Infrastructure Limited is a duly incorporated Company under the Companies Act, 1956 carrying-on

real estate business and had filed a complaint against M/s KST Infrastructure Limited/accused respondent and its functionaries on the allegations that in acknowledgement of the outstanding amount due towards the complainant, the accused had issued cheques No.875908, 875909 and 875910 dated 07.06.2008, 14.06.2008 and 21.06.2008 respectively each for a sum of ₹50.00 lacs. On due presentation as per the terms meted out by the accused, the cheques were presented and which stood dishonoured on account of insufficiency of funds. Thereafter legal notice was issued and after the requisite time, has led to filing of the complaint on 23.12.2008 before the Court of learned ACJM, Faridabad.

Heard. Undisputedly and is even otherwise well reflected from the records of the trial Court vide orders dated 24.12.2008, accused were summoned for commission of offence under Section 138 Negotiable Instruments Act, 1881 (in short, 'the Act'). The accused appeared before the Court on 12.01.2010 and were served with notice of accusation on 20.04.2010. To cut it short, the evidence of the complainant was completed and closed on 18.09.2013 and the matter was adjourned for recording statement of the accused under Section 313 Cr.P.C. which was accomplished on 10.10.2013 and thereafter, the matter was adjourned for defence evidence. It is thereafter, eight adjournments were sought for completion of the defence evidence when following orders were passed on 07.02.2014, which is being reproduced below to lay emphasis:

“Present: Complainant with counsel.

Accused on bail with counsel.

No DW present. Adjournment requested. Now the case is adjourned to 18.2.14 for DW, if any and for final arguments. Last opportunity shall stand.”

*(Khatri Saurabh)
JMJC/Faridabad/7.2.14”*

It is by another quirk of fate, the same Presiding Officer who had earlier passed the orders dated 07.02.2014, has passed the impugned orders, apparently reflecting that the case has been received by transfer when there is nothing reflected on the records of the lower Court. Thus, the million dollar question that arises is whether the learned Magistrate has exceeded its jurisdiction in the dispensation of justice?

The Hon'ble Supreme Court of India and even this Court have repeatedly laid down and stressed by way of guidance to the courts below as to the exercise of powers under Section 256 Cr.P.C. Though it is not denied by the counsel representing the two sides that dismissal of the complaint in default at this juncture is covered under these provisions and tantamounts to acquittal of the accused and by virtue of the same, provides a remedy by way of an appeal in terms of Section 378(4) Cr.P.C. lies but what is and needs to be emphasized is that such powers under Section 256 Cr.P.C. are by way of deterrence against the dilatory tactics on the part of the complainant who has set the law into motion by virtue of his complaint, and therefore, is the protective provision for the benefit of the accused so that he is not put to hardship by such unnecessary adjournments of the complaint. But here, as is reflective, it is the accused side which appears to be using these delaying tactics as a tool to frustrate the endeavours of the

complainant who has been knocking at the doors of the Courts since 2008 when the present complaint was initiated.

Admittedly, on the day when the impugned order was made, the case was fixed for evidence of the defence and there is nothing suggestive therein that any defence witness of the accused was present and rather what bears out is that neither from the side of the complainant nor that of the accused anyone was present and thus, led the learned Magistrate to hold that the appearance of the complainant was necessary on that very day and being a non-essential on that very day for the very progress of the case the situation never arose for passing of such an order of dismissal. To the mind of this Court, the presence of the complainant on that day was quite unnecessary and rather resorting to the step of axing down the complaint is certainly not the appropriate and correct exercise of powers envisaged under Section 256 Cr.P.C. The discretion so exercised by the learned Court below can neither be fair nor judicially justified and rather has totally impaired the cause of administration of criminal justice.

Taking from another angle, if we go by the mentioning in the impugned order, the case has been transferred and even then it would not be appropriate for the transferee Court, which received the case on that very day, to have outrightly resorted to such a means and ought to have been conscious and aware of the fact that the complainant/litigant has been pursuing his relief attending each and every date of hearing and by such a process to fast-track-justice has

certainly benumbed judicial mind and that such an act cannot be inferred to be a justice in its purest form.

This Court seeks support from '**The Associated Cement Co. Ltd. v. Keshvanand**' 1998(1) RCR (Criminal) 309 and ratio of a Coordinate Bench of this Court in '**Jitender Bajaj v. State (U.T. Chandigarh) and others**' 2005(3) RCR (Criminal) 69, whereby three modes for redressal of such a grievance where a complaint of the complainant has been dismissed in default, can be initiated either by way of a revision, by filing second complaint or by way of an appeal, and the last one has been resorted to by the present appellant, which sufficiently rebuts the contentions of the learned counsel for the respondents that appeal is not maintainable.

In the light of what has been detailed and discussed above, the orders dismissing the complaint of the learned Court below certainly are bad in law and needs to be set aside by way of acceptance of the instant appeal. The complaint is thus ordered to be restored at its original number and the trial Court is directed to proceed ahead into the matter as per law. Keeping in view the inordinate delay that has been occasioned necessitates issuance of directions to the trial Court to speedily dispose off the same by giving short adjournments.

The appeal stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

February 17, 2016
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