

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

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CRM-M-6678-2015.

Date of Decision: 07.12.2017.

Atul Sood

....Petitioner.

Versus

Jalandhar Transport Co-operative Society Pvt. Ltd. and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Amardeep Singh Gill, Advocate, for the petitioner.

None for respondent No.1.

Mr. A.S. Sandhu, Additional Advocate General, Punjab
for respondent No.2.

Ramendra Jain, J.(Oral)

Through this petition under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.'), the petitioner-accused has prayed for quashing the order dated 21.11.2014 (Annexure-P6) of the Revisional Court, Jalandhar, vide which order dated 13.06.2014 (Annexure-P4) dismissing the complaint of complainant-respondent No.1 filed under Section 138 of the Negotiable Instruments Act (for short, 'the Act'), was set aside, resulting into restoration of the complaint, which could not have been restored except in appeal alongwith an application under Section 378(4) Cr.P.C.

Put pithily, respondent No.1 filed a complaint under Section

138 of the Act, against the petitioner, in which, after recording the

respondent's evidence, when the petitioner could not conclude his defence evidence despite availing sufficient opportunities including last one, the trial Court vide order dated 09.05.2014 (Annexure-P2) closed his defence evidence. Being aggrieved, the petitioner-accused preferred a revision to permit him to lead further defence evidence by setting aside the order dated 09.05.2014 (Annexure-P2). During its pendency, complaint of respondent No.1 was dismissed by the trial Court vide order dated 13.06.2014 (Annexure-P4). Resultantly, the petitioner made a statement before the Revisional Court on 21.11.2014 (Annexure-P5) that he does not want to proceed further with his revision as the same has rendered infructuous in view of dismissal of the complaint of respondent No.1. However, the revisional Court instead of allowing the petitioner to withdraw his revision, passed the impugned order Annexure-P6 dated 21.11.2014, setting aside the order of dismissal of complaint dated 13.06.2014 (Annexure-P4) of the trial Court as well as order dated 09.05.2014 (Annexure-P2) closing the defence evidence of the petitioner directed the trial Court to issue notice to the respondent and to proceed further with the complaint in accordance with law.

Learned counsel for the petitioner inter-alia contends that the revisional Court had no jurisdiction to restore the complaint, which was dismissed in default for want of prosecution on account of non appearance of the respondent and therefore, the impugned order Annexure-P6 is illegal. In support of his contention, he has placed reliance upon the decision of the Bombay High Court in **Vinay Kumar vs. Ramesh Saboo, 2009(5) R.C.R.**

(Criminal) 164.

The respondent-complainant had only remedy to get restored his complaint by way of filing appeal before this Court under Section 378 Cr.P.C. The lower revisional Court, without any such application and having no jurisdiction to restore the complaint, has committed a grave illegality in passing the impugned order dated 21.11.2014 (Annexure-P6).

After giving my anxious consideration to the submissions made, I find merit in the instant revision petition inasmuch as revisional Court had no jurisdiction to suo motu order for restoration of complaint even with or without any such application. Undisputedly, no application for restoration of complaint was filed before the revisional Court, who instead of restoration of the complaint directing the trial Court to proceed further with the same in accordance with law, ought to have dismissed the revision petition as withdrawn in view of the statement of the petitioner, without further going into the merits of the case. In view of the settled proposition of law that a complaint under Section 138 of the Act, dismissed in default, amounts to acquittal of the accused and the Magistrate has no jurisdiction to restore or revive the same. The only remedy available to him is under Section 378 Cr.P.C. Reference in this regard can be made to Vinay Kumar's case (supra).

In view of above, the instant petition is accepted. The impugned order dated 21.11.2014 is set aside.

(RAMENDRA JAIN)
JUDGE

07.12.2017
jitender sharma

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No