

CRM-A-2285-MA-2016 (O&M)

Date of decision: 04.04.2018

Harjoginder Singh

...Applicant

Versus

Satwant Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Sumeet S. Brar, Advocate
for the applicant.

Mr. P.K.S.Phoolka, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (ORAL)

Learned counsel for the applicant submits that the complaint filed by the applicant was dismissed for non-prosecution vide impugned order dated 02.08.2016. Thereafter, the applicant moved an application for restoration of the complaint which was also dismissed vide order dated 29.09.2016. Learned counsel for the applicant further submits that the applicant has shown bona fide grounds before the trial Court for non-appearance of the applicant.

A perusal of the orders shows that the complaint remained pending for consideration for a long time for procuring the presence of the respondent-accused and even bailable warrants were issued against him and he appeared on 07.03.2015 in pursuance to the execution of non-bailable warrants and was later on granted bail. Subsequently, on few occasions, accused-Satwant Singh was granted exemption from personal appearance and on that account also, the case was adjourned.

Counsel for the applicant further submits that thereafter, on

request of the respondent-accused, the case was adjourned as it was stated before the trial Court that there is a possibility of compromise between the parties and in that process, the case was dismissed for non-prosecution on 02.08.2016. He further submitted that the applicant moved an application for restoration of the complaint on the ground of noting a wrong date. Learned counsel for the applicant further submits that in fact one more complaint filed by the complainant under Section 420 and 406 IPC was pending at Bathinda and on an application moved by the respondent – accused, the present complaint was transferred from Talwandi Sabo to Bathinda, by the Sessions Judge, Bathinda vide order dated 11.03.2016. Learned counsel for the applicant has drawn attention of this Court to the cause list of the trial Court to show that on 12.04.2016 both the cases were adjourned to 10.08.2016. Counsel for the applicant further submitted that on 10.08.2016 when he appeared before the trial Court, he found that only one case is listed i.e the complaint filed by the respondent-accused and on an enquiry, he came to know that the present complaint filed by the applicant was dismissed for non-prosecution on 02.08.2016 and the applicant was under a bona fide impression that both the cases are adjourned for 10.08.2016. Thereafter, the applicant filed an application for restoration of the complaint, which was dismissed by the trial Court on 29.09.2016 holding that there is no such provision in Cr.P.C. for restoration of the complaint.

Learned counsel for the appellant-complainant, in support of his arguments, has referred to 2015 (8) RCR (Criminal) 567, Sardar Singh vs. Gian Chand; 2016 (2) Law Herald 1420, Punjab State Industrial Development Corp. Ltd. vs. M/s Asia Spintex Ltd and others and 2016 (3)

RCR (Criminal) 624, Surrender vs. Deshraj, to submit that where a complaint has been dismissed, it amounts to discharge and that the impugned order has been passed in violation of the provisions of Section 256 Cr. P.C. It is further submitted that before passing the impugned order, trial Court has never issued notice to appellantcomplainant and has straight away passed the order dismissing the complaint without affording any further opportunity. It is further submitted that since appellant-complainant has filed the complaint under Section 138 of the Act, trial Court should have passed an order to give a notice either to the appellantcomplainant or to his counsel as per the provisions of Section 256 Cr. P.C. and, therefore, impugned order dated 02.08.2016 dismissing the complaint is illegal.

After hearing counsel for the applicant, I find merit in the present application. It has been held by this Court in judgment Sardar Singh's case (supra) that in case, a complaint is dismissed for non-prosecution, the same can be restored by the High Court in appeal. Since the applicant has shown bona fide ground that on the last two dates both the complaints were fixed for the same date, however, on 12.04.2016, the dates were given separately in both the cases i.e. in the present case, the trial Court adjourned for 02.08.2016 and the other complaint filed by the respondent-accused, the same was adjourned to 10.08.2016, therefore, the applicant was under a bona fide impression that both the cases were adjourned for the same date i.e. 10.08.2016 and on coming to know regarding dismissal of complaint, he immediately moved an application for restoration of the complaint.

It is well settled principle of law that a complaint should not be dismissed on the technical ground and the complainant should not be

condemned unheard specially in case the applicant has shown bona fide ground for non-appearance.

For the reason stated above, the appeal is allowed and the impugned order dated 02.08.2016 passed by the trial Court, dismissing the complaint on account of non-appearance of the applicant is set aside and and the complaint filed by the complaint is restored the matter is remanded back to the trial Court.

The parties are directed to appear before the trial Court on 23.04.2018.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

04.04.2018
Hemlata

Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No