

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203

CRM-M-30061-2015

Date of Decision:06.09.2018

Dharambir and others

.....Petitioners

Versus

Smt. Usha and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Deepender Singh, Advocate,
for the petitioners.

Mr. S.K. Yadav, Advocate,
for the respondents.

HARI PAL VERMA, J.(Oral)

Through the instant petition filed under Section 482 Cr.P.C., petitioners have challenged the order dated 29.05.2015 (Annexure P-1) passed by learned Additional Sessions Judge, Rewari, whereby while exercising its revisional jurisdiction, learned Additional Sessions Judge has set aside the order dated 22.02.2013 (Annexure P-6) passed by Judicial Magistrate 1st Class, Rewari, dismissing the complaint filed by respondents-complainants for want of prosecution the case, titled as “Usha and another Versus Dharambir and others”.

Briefly stated, the respondents had filed a complaint under Sections 452, 323, 506, 34 IPC. In the said complaint, petitioners were summoned as accused vide order dated 23.01.2010. The petitioners had challenged the summoning order dated 23.01.2010 passed by the Judicial Magistrate 1st Class, Rewari. However, vide order dated 08.12.2012, the

revisional court held that there is sufficient evidence to proceed against the petitioners-accused under Sections 452, 323, 506, 34 IPC and in this manner, summoning order dated 23.01.2010 was affirmed. On dismissal of the revision petition filed by the petitioners-revisionists, the matter was remitted back to the trial court for decision. Parties were directed to appear before the trial court on 17.12.2012. On 12.02.2013, learned Judicial Magistrate 1st Class (Lalita Patwardhan) passed the following order:-

“Present: complainant is present.

Accused is present.

File not received for appellate court. It is stated that revision petition was decided by the Appellate Court in December, 2012. Therefore, Ahlamd is directed to concerned appellate court official and file be put on 17.05.13.”

The case was adjourned for 17.05.2013. However, at the same time, another court i.e. Judicial Magistrate 1st Class, Rewari, (Suruchi Atreja Singh) had also passed the order dated 22.02.2013 in the following manner:-

“Accused on bail with Sh. Raghubir Singh, Advocate. Today, the case was fixed for further proceedings but the complainant did not turn up in the Court. Case called several times since morning but none has appeared on behalf of the complainant, nor any intimation received through her Counsel so far. It is already 2.30 PM. Further wait is not justified. It seems that the complainant does not want to proceed further with this complaint. Hence, the present complaint is hereby dismissed for want of prosecution. File be consigned to the record room after due compliance.”

Thus, for the same criminal complaint, Judicial Magistrate 1st

Class (Lalita Patwardhan) had adjourned the case for 17.05.2013, but the

dismissed the complaint for want of prosecution vide order dated 22.02.2013. The order dated 22.02.2013 was challenged by the respondents-complainants before learned Additional Sessions Judge, Rewari. Vide order dated 29.05.2015 the revisional court had set aside the order dated 22.02.2013, whereby the complaint was dismissed for want of prosecution and remitted the matter back to the court of Chief Judicial Magistrate, Rewari, to proceed with the trial afresh in accordance with law. The operative part of the order dated 29.05.2015 reads as under:-

“Taking into account the events as emerging from the records and considering the law applicable to the given facts, as noticed above, this court finds that the impugned order of dismissal of complaint passed by the trial court is unsustainable in law. As a result, the same is set aside. Consequently, this revision petition is allowed. The matter is remitted back to the court of Chief Judicial Magistrate, Rewari, to proceed with the trial afresh in accordance with law from the stage of framing of charge and conclude the same at an early date by keeping the file before it or by marking the same to some other court. Parties through their counsels are directed to appear before the court of learned Chief Judicial Magistrate on 04.08.2015 for attending further proceedings.”

It is in these circumstances, the petitioners-accused have filed the present petition under Section 482 Cr.P.C. challenging the order dated 29.05.2015.

Learned counsel for the petitioners has argued that on 22.02.2013, when the complaint filed by the respondents was dismissed for want of prosecution, neither the complainants nor their counsel had appeared and therefore, the trial court had no other option except to dismiss

the complaint for want of prosecution. Moreover, against the order of

dismissal of the complaint for want of prosecution, the respondents had a remedy available to them under the law but they have wrongly exercised the jurisdiction of the revisional court. The order of dismissal of complaint for non-prosecution led to dismissal of the complaint and as a consequence thereof, the petitioners-accused were deemed to have been acquitted. Therefore, since the respondents-complainants were not competent to file the revision petition against the order of dismissal of the complaint for want of prosecution, the order passed by learned Additional Sessions Judge is not legally sustainable.

On the other hand, learned counsel for the respondents has argued that the respondents-complainants are not at fault. In the complaint, the accused were summoned to face trial for the offence under Sections 452, 323, 506, 34 IPC and the accused had filed a revision petition against the summoning order. The said revision petition was dismissed and the matter was remitted back to the trial court. As a consequence thereof, parties had bonafidely appeared before the trial court and the order dated 12.02.2013 passed by Judicial Magistrate 1st Class (Lalita Patwardhan) reflects that the case was adjourned to 17.05.2013 as the Ahlmad was directed to collect the file from the appellate court. In this manner, non-appearance of the complainants before the court of Judicial Magistrate 1st Class (Suruchi Atreja Singh) on 22.02.2013 was bonafide as they had no notice of appearance for the said date.

I have heard learned counsel for the parties.

The orders dated 29.05.2013 (Annexure P-1) and 22.02.2013 (Annexure P-6) passed by the courts below clearly indicate that there was a communication gap between the courts themselves for which the petitioners

cannot be made to suffer. At the same time, it was the duty of the petitioners-accused to point out to the court about the pendency of complaint and its listing before two different courts. Since the petitioners-accused had appeared before the learned Judicial Magistrate 1st Class on 12.02.2013 and the case was adjourned to 17.05.2013 in their presence, it was incumbent upon the petitioners to point out the fact that the court of Judicial Magistrate 1st Class (Lalita Patwardhan) had already adjourned the case to 17.05.2013, which would have given an opportunity to learned Judicial Magistrate 1st Class (Suruchi Atreja Singh) to verify this fact. In this manner, this Court finds that the order dated 22.02.2013 was passed despite the petitioners being in the knowledge of the other order dated 12.02.2013 (Lalita Patwardhan), whereby it was fixed for 17.05.2013. Though against the order of dismissal of the complaint for want of prosecution, the respondents were required to file leave to appeal as provided under Section 378(4) Cr.P.C., but in order to avail the recourse to the proceedings under Section 378(4) Cr.P.C., this Court finds that it would led further multiplicity of proceedings and in this manner, the dispute between the parties would never come to an end. The technicality of law should not come in way while dispensing justice to the parties.

Accordingly, this Court is of the view that the parties should appear before the trial court as directed by the revisional court to face the trial in accordance with law.

Dismissed.

September 06, 2018
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(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No