

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30486-2014 (O&M)
Date of decision: 09.05.2018

Avtar Singh

....Petitioner

Versus

Avdesh Kumar and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. D.S. Gurna, Advocate
for the petitioner.

Mr. A.S. Rai, Advocate
for respondent No.1.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of the order dated 03.09.2013 (Annexure P-4) passed by the trial Court, whereby the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, bearing No.930/2 of 10.10.2009 titled as Avtar Singh Vs. Avdesh Kumar and another, was dismissed for non-prosecution.

Learned counsel for the petitioner submits that after the trial Court passed the summoning order, the respondent-accused appeared before the trial Court and on 24.07.2010, respondent-accused absented and his bail/surety bonds were forfeited and non-bailable warrants were issued

against respondent-accused as well as his surety. Thereafter, on various dates, when presence of the respondent-accused could not be procured, the trial Court issued a publication and on 29.07.2011, after recording statement of the complainant, respondent-accused was declared a proclaimed offender and the case was consigned to the record room. It is further submitted that thereafter, respondent-accused filed a petition before this Court, in which a direction was issued to the respondent to appear before the trial Court and he was granted the concession of interim bail and accordingly, the trial Court, by accepting the bail/surety bonds of the respondent-accused, revived the complaint and issued notice to the petitioner-complainant.

Learned counsel for the petitioner has placed on record certified copies of the zimini orders to submit that notices were issued to the petitioner-complainant, however, he was never served, because in the intervening period, he has travelled abroad and in some orders, even the presence of counsel for the petitioner-complainant is marked, though the trial Court is issuing fresh notices to the petitioner. A perusal of the order dated 03.06.2013 shows that though presence of counsel for the petitioner-complainant is marked, yet notice to the complainant was issued, which was never received by him and even on few dates, the trial Court has issued warning to the concerned Ahlmad for not issuing notice to the complainant.

Learned counsel for the petitioner further submits that even when the impugned order was passed on 03.09.2013, dismissing the complaint in default for non-prosecution, the trial Court has recorded that “notice to the complainant issued but not received back”. Therefore, the

complainant is not interested in pursuing the complaint. It is further submitted that before the respondent-accused was declared a proclaimed offender, the petitioner was regularly appearing before the trial Court and after granting the interim bail to the respondent-accused by this Court in pursuance of revival of the complaint, the petitioner was never served and therefore, dismissal of the complaint in default for non-prosecution is erroneous.

Learned counsel for respondent No.1 has however opposed the prayer for quashing of the impugned order (Annexure P-4) on the ground that since the complainant is residing abroad, notices issued to him were not served and even if the criminal complaint is restored before the trial Court, petitioner will not appear to pursue his case.

After hearing learned counsel for the parties, I find merit in the present petition.

It is not disputed that when the complaint was consigned to the record room by the trial Court, it is recorded that the respondent-accused was declared a proclaimed offender, as he jumped the bail. Later on, when respondent-accused was granted permission by this Court to appear before the trial Court and he was further granted interim bail, the trial Court, on various dates, though issued notice to the complainant, however, he was never served. Even a perusal of the impugned order shows that notices issued to the petitioner-complainant were not received back served.

In view of the above, this petition is allowed and the impugned order dated 03.09.2013 (Annexure P-4) passed by the trial Court is set aside.

The parties are directed to appear before the trial Court/Successor Court/Chief Judicial Magistrate, Ludhiana and the trial Court will dispose of the complaint preferably within a period of six months, in accordance with law, from the date of receipt of certified copy of this order.

09.05.2018
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

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