

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-32400 of 2016

Date of decision:14.12.2018

Sanjay Aggarwal

...Petitioner

v.

Narinder Singh and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Amandeep Singh Manaise, Advocate for the petitioner.

None for respondents No.1, 2 and 4.

Mr. Sukhbir Singh, Advocate for respondent No.3.

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Inderjit Singh, J.

The petitioner has filed this petition under Section 482 Cr.P.C. for seeking quashing of impugned order dated 2.6.2016 (Annexure-P.4) passed by learned Additional Sessions Judge, Gurdaspur, in revision upholding the impugned order dated 16.10.2015 (Annexure-P.2) passed by learned Sub Divisional Judicial Magistrate, Batala, vide which criminal complaint No.82 dated 15.4.2013 (Annexure-P.1) filed under Sections 3 and 4 of Prevention of Corruption Act, 1988 has been dismissed in default.

Notice of motion has been issued in this case.

Mr. Sukhbir Singh, learned Advocate has put in appearance on behalf of respondent No.3 and contested this petition. Earlier Mr. S.S. Mattewal, learned Advocate has been appearing on behalf of respondent

No.2, but today no one has appeared on behalf of respondent No.2.

I have heard learned counsel for the petitioner and learned counsel for respondent No.3 and have gone through the record.

A perusal of the record shows that that Sanjay Aggarwal-complainant filed the complaint against Narinder Singh SI, Brij Moan Aggarwal, Amit Aggarwal and Munish Aggarwal alias Munish Mittal, which was pending before the Court of learned Sub Divisional Judicial Magistrate, Batala, who on 16.10.2015 passed the following order:-

“File taken up again after lunch, case again called several times but neither complainant nor his counsel has come present. The presence of the complainant or his counsel is very much required as the case was fixed for preliminary evidence of the complainant. Case called several times since morning but nobody appeared on behalf of complainant. It appears that complainant is not interested in pursuing with the present complaint. As such the complaint is dismissed in default for want of prosecution. File be consigned to record room, Batala.”

Aggrieved from this order, the complainant filed criminal revision petition before the learned Additional Sessions Judge, Gurdaspur, who vide order dated 2.6.2016 dismissed the revision petition. The learned Additional Sessions Judge, Gurdaspur, held in the order that the complaint was pending since 5.11.2012 and the revisionist has examined himself on 16.2.2012 and two other CWs have been examined on 20.11.2013 and

11.2.2014. It has been stated that the complaint remained pending for a long period, but the complainant has not produced the preliminary evidence. On 4.9.2015, the complainant and his counsel did not appear in the Court, therefore, the learned Presiding Officer adjourned the complaint for 16.10.2015 for awaiting the presence of the complainant. On 16.10.2015, the complaint was called at about 12.25 p.m. and thereafter, in post noon session at 2.30 p.m., however, since neither complainant nor his counsel put in appearance on his behalf, in that event, the complaint was dismissed in default.

The case of the complainant was that when the complaint was called, he happened to take water and then he informed his Advocate, who was busy in other Court. The Court below has not accepted this explanation and the revision petition was also dismissed.

I have gone through the record and have heard learned counsel for the parties.

Learned counsel for the petitioner brought it to my notice that the complaint was not filed on 5.11.2012. Rather, it has been filed on 15.4.2013 and the Court has wrongly mentioned this fact. He admitted that there were two complaints between the same parties. The other complaint, which was listed before trial Court, both the complaints have been dismissed. The revision petition in that case has also been dismissed by the learned Additional Sessions Judge, Gurdaspur.

A perusal of the record shows that even the petition filed for quashing of those orders passed by the learned trial Court as well as the learned revisional Court have been challenged before this Court in Criminal

Misc. No.M-32195 of 2016 and the quashing petition has also been dismissed in the second case vide order dated 28.11.2016 by this Court. The present case is also on similar facts with the change of the date. Even if it is taken that the complaint had been filed in the month of April 2013 even then it is clear that it remained pending upto 16.10.2015 when it was dismissed in default. Neither the complainant nor his counsel appeared nor preliminary evidence completed for such a long period i.e. in two years six months. The explanation of the complainant that he had gone to fetch water also does not hold good. As per the judicial order passed by the learned trial Court the case has been called twice. If at one time, he had gone to fetch water, what about the second call when it was called. There is no explanation. A perusal of the orders passed by the Courts below shows that these orders, in no way, can be held as illegal.

Therefore, from the above, I find that no illegality has been committed by the learned trial Court or by the learned Additional Sessions Judge, Gurdaspur, while dismissing the criminal complainant and revision petition respectively. Consequently, no ground is made out for quashing of the impugned orders passed by the Courts below.

Therefore, finding no merit in this petition, the same is dismissed.

December 14, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No