

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-6353 of 2017

Date of Decision: 11.09.2018

Heera Lal

...Petitioner(s)

Versus

Nand Ram

...Respondent(s)

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

Present:- Mr. Vikas Kumar, Advocate
for the petitioner.

Ms. Jasneet Mehra, Advocate for
Mr. Amrainder Singh, Advocate
for the respondent.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for setting aside the order dated 06.01.2017 (Annexure P-2) passed by Additional Sessions Judge, Faridabad, whereby the revision petition filed by the respondent-complainant against order dated 29.09.2016 passed by Judicial Magistrate Ist Class, Faridabad, dismissing the complaint for non-prosecution, was allowed and the case was sent back to the trial Court for trial.

Briefly stated, the respondent-complainant had filed a complaint against the petitioner under Sections 138 and 142 of the

Negotiable Instruments Act, 1881 (for short, “the Act”) read with Section 420 IPC. However, the trial Court vide order dated 29.09.2016 dismissed the said complaint for non-prosecution on account of non-appearance of the respondent-complainant. On 29.09.2016, three different orders were passed by the trial Court, which read as under:-

“Case has been called out but none has appeared on behalf of complainant. It is already 10:00 A.M. Let the case be again put up at 12:30 O’clock.”

“Case has been called out but none has appeared on behalf of complainant. It is already 12:45 P.M. Let the case be again put up after lunch.”

“Case was fixed for cross-examination of complainant. Case again called several time since morning. Neither complainant nor his counsel appeared. Neither any intimation received on behalf of complainant. Presence of complainant was necessary for today so that his cross-examination can be conducted. It is already 3:30 P.M. No further wait is justified. A perusal of file reveals that since last two dates complainant and his counsel has not appeared. It transpires from the conduct of complainant that he is not interested in pursuing the present case. Therefore, this Court finds no justification for again adjourning the case for cross-examination of complainant. Therefore, the present complaint is hereby dismissed in default for want of prosecution. File be consigned to the record room, after due compliance.”

The said orders were challenged by the respondent-complainant by way of revision petition and the revisionary Court vide order dated 06.01.2017 set aside the orders dated 29.09.2016 and the case was sent back to the trial Court for trial.

Aggrieved against the order dated 06.01.2017, the petitioner has filed the present petition.

Learned counsel for the petitioner has argued that the order dated 06.01.2017 passed by learned Additional Sessions Judge, Faridabad is wrong exercise of power, as the Court of Additional Sessions Judge is not vested with the powers to entertain a revision petition against the order dismissing the complaint for non-prosecution. Rather, dismissal of the complaint for want of prosecution tantamounts acquittal and therefore, the remedy, if any, available to the respondent-complainant was to file an application for leave to appeal under Section 378(4) CrPC before this Court. Thus, the order dated 06.01.2017 passed by the revisionary Court is not sustainable.

On the other hand, learned counsel for the respondent-complainant has fairly conceded this proposition of law and submits that the complainant has inadvertently exercised the aforesaid remedy before the revisionary Court, but complainant had no intention not to appear before the trial Court.

Admittedly, the remedy available to the respondent-complainant against the order dated 06.01.2017 was to invoke the jurisdiction of this Court by filing an application for leave to appeal under Section 378(4) CrPC and therefore, the order dated 06.01.2017 passed by learned Additional Sessions Judge, Faridabad is not sustainable.

Accordingly, the present petition is accepted and the impugned order dated 06.01.2017 is set aside.

However, since the respondent-complainant is pursuing his remedies under a *bona fide* belief, he is at liberty to challenge the order dated 29.09.2016 passed by Judicial Magistrate Ist Class in accordance with law.

September 11, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No