

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Revision Application No. 140 of 2019

Pruthviraj Bhalerao

Vs.

Vasant Chandekar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.R.R. Gour, Advocate for applicant

CORAM : MANISH PITALE, J.

DATED : JULY 3, 2019

The applicant herein has approached this Court, challenging the order dated 07/02/2018, passed by the Civil Judge, Jr. Dn. (Spl. Court for 138 N.I. Act), Nagpur, whereby the complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881, was dismissed.

2. It is contended on behalf of the applicant that the complaint has been dismissed due to absence of the complainant and his counsel on the said date of hearing. It is submitted that the Court below could not have dismissed the complaint in default because if power under Section 203 of the Code of Criminal Procedure was to be exercised, the Court ought to have applied its mind and come to a conclusion that there

was absence of sufficient ground for proceeding further in the matter. It was submitted that therefore, the impugned order deserved to be set aside and the Court below was required to be directed to take up the complaint for consideration on merits.

3. This Court by order dated 20/06/2019, condoned the delay in filing the revision application and thereafter the revision application is taken up for consideration. It was pointed out by the learned counsel for the applicant that even issuance of notice on the revision application was not necessary because by the impugned order the complaint was dismissed without even the accused being called upon to respond. Therefore, according to learned counsel for the applicant, even while considering the present revision application and particularly in the light of the nature of the impugned order, the revision application could be decided without issuing notice to the non-applicant (alleged accused). In support of his contention the learned counsel for the applicant has relied upon the Judgment of **Punjab and Haryana High Court in the case of Joga Singh Vs. State of Punjab and Ors. 2007 CRI.L.J. 1306** and the Judgment of the **Madras High Court in case of M. Thulasidass Vs. K. Govindaraju 1995 CRI.L.J. 1660**.

4. A perusal of the impugned order in the present case shows that a complaint of the applicant

herein was dismissed for failure on the part of the applicant and his counsel to remain present before the Court below when the complaint was taken up for consideration. It is recorded in the impugned order that the applicant had remained continuously absent and that he was no more interested in pursuing the matter. On this basis, the complaint was dismissed, essentially in default, although it was stated in the order that the complaint was being dismissed under Section 203 of the Code of Criminal Procedure.

5. A perusal of Section 203 of the Code of Criminal Procedure shows that the Court of Magistrate can dismiss a complaint if it comes to the conclusion upon consideration of the material on record that no sufficient ground for proceeding further was made out. It is further specifically stated in the said provision that reasons shall be recorded briefly by the said Court while dismissing complaint. Thus, it becomes evident that the Court of Magistrate is expected to apply its mind while exercising powers under Section 203 of the Code of Criminal Procedure to dismiss a complaint, by coming to a conclusion that sufficient ground for proceeding was not made out. Absence of the complainant, like the applicant in the present case and his counsel, cannot be a ground for dismissing a complaint under Section 203 of the Code of Criminal Procedure. In the present case, a perusal of the impugned order does not show that there has been any

application of mind to the material available on record before dismissal of the complaint. All that is recorded is the continuous absence of the complainant (applicant) and finding based on the same that the applicant was no longer interested in pursuing the matter. Therefore, the impugned order is found to be erroneous and liable to be set aside.

6. In this regard, the learned counsel for the applicant has correctly placed on record the Judgment of the **Punjab and Haryana High Court in the case of Joga Singh Vs. State of Punjab and Ors.** (supra), wherein it has been held as follows.

“It is, thus apparent that Sections 200 to 203 of the Code, which govern procedure to be adopted, at the pre-summoning stage, do not impose any statutory duty upon a complainant to appear, in person on each date. His absence, therefore, cannot be a ground to dismiss a complaint for non-prosecution. Where, a complainant fails to appear, whether in person or through counsel, at the pre-summoning stage, the Magistrate is required to appraise the pleadings, the evidence, if any adduced in support thereof and thereafter proceed to either dismiss the complaint, in terms of Section 203 of the Code or issue process under Section 204 of the Code. At the pre-summoning stage, a Magistrate cannot dismiss a complaint for failure of the complainant to enter appearances and for want of prosecution.”

7. As regards the question as to whether notice is required to be issued to the non-applicant herein

before deciding the present revision application, the learned counsel for the applicant has placed reliance on the Judgment of **Madras High Court in case of M. Thulasidass Vs. K. Govindaraju** (supra). It has been held therein that when the order under Section 203 of the Code of Criminal Procedure was passed dismissing a complaint, the accused was not even present before the Court because the process was yet to be issued and that therefore, there was no necessity to give him an opportunity to put in appearance and defend revision filed by the complainant, challenging the dismissal of complaint under Section 203 of the Code of Criminal Procedure.

8. In the present case also, the non-applicant was not even summoned by the Court below and the complaint stood dismissed at the pre-summoning stage, on the ground that the applicant had remained continuously absent before the Court below. In this situation, this Court is of the opinion that the present revision application can be taken up for consideration and disposal without necessity of issuing notice to the non-applicant.

9. Having found that the impugned order is unsustainable, present revision application is allowed. The impugned order dated 07/02/2018, passed by the Court below is quashed and set aside and the Court below is directed to take up the complaint filed by the

applicant for consideration afresh. The applicant is directed to remain present before the Court below on **15/07/2019**. The Court below shall take up the proceedings for further consideration expeditiously.

JUDGE

MP Deshpande