

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M No.13488 of 2017 (O&M)

Date of decision: 18.03.2019

Ramanjit Singh

....Petitioner

Versus

Ramesh Kumar Narula

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Anupam Singla, Advocate
for the petitioner.

Mr. B.D. Sharma, Advocate
for the respondent.

ARVIND SINGH SANGWAN J.

Prayer in this petition is for setting-aside the order dated 13.08.2015 passed by the Additional Sessions Judge, Ludhiana vide which the revision petition filed by the respondent/complainant – Ramesh Kumar Narula was accepted and the order dated 01.06.2015 passed by the trial Court dismissing the criminal complaint No.301 dated 09.04.2014 filed by the respondent under Section 138 of the Negotiable Instruments Act, in default of non-appearance was set-aside and the complaint was restored.

Brief facts of the case are that the respondent/complainant has filed the aforesaid complaint under Section 138 of the Negotiable Instruments Act, on account of dishonour of two cheques for an amount of Rs.1,85,544/- and Rs.1,93,526/-, respectively on account of purchase of some material. The cheques were dishonoured by the bank with the

remarks 'Insufficient Funds' on 29.01.2014. During the pendency of the complaint, on 01.06.2015, the case was fixed before the trial Court for depositing the publication charges for effective service of the petitioner – Ramanjeet Singh, however, on account of non-appearance of the complainant and his counsel, the same was dismissed in default on 01.06.2015.

Thereafter, the respondent filed a revision before the Court of Sessions and the Additional Sessions Judge without issuing notice to the petitioner/respondent accepted the same while noticing the relevant facts that the complainant has given a bona fide reason for not depositing the publication charges as he was out of station and the trial Court has dismissed the complaint without providing him further opportunity and has passed the order in a haste. It was further observed that the trial Court instead of dismissing the case should have granted one more opportunity to do the needful and deposit the publication charges. The Revisional Court also relied upon certain judicial pronouncements to hold that the trial Court has not exercised the discretion in a judicial manner, when the complainant on earlier dates, was regularly appearing and restored the complaint on payment of costs of Rs.1,000/- to be deposited with the District Legal Services Authority, Ludhiana.

Counsel for the petitioner has argued that since the complaint was discharged for non-appearance, it would amount to discharge and, therefore, against the order of acquittal, the revision was not maintainable before the Court of Sessions and the remedy was to file an appeal under Section 378(4) of the Criminal Procedure Code (in

short 'Cr.P.C.'). It is further argued that even otherwise, the Revisional Court while passing an order adverse to the petitioner was bound to issue notice to the petitioner as per the provisions of Section 397 Cr.P.C. and without affording an opportunity of hearing to the petitioner, the impugned order passed by the trial Court was wrongly set-aside.

In reply, counsel for the respondent has argued that at the stage, when the complaint was dismissed for non-appearance, the petitioner was not served, therefore, the Revisional Court was not required to issue notice to the petitioner. It is further submitted that the Revisional Court has rightly held on merits that the trial Court without affording proper opportunity to the petitioner to deposit the publication charges, in a haste, has dismissed the complaint for non-prosecution though, the complainant was regularly appearing before the trial Court.

Counsel for the respondent has relied upon the judgment ***“Purshotam Mantri vs Vinod Tandon @ Hari Nath Tandon”*, 2009(1) RCR (Criminal) 442**, wherein it has been held that the High Court in its inherent power under Section 482 of the Code can direct registration of the case, which was dismissed in default, if sufficient evidence is found for non-appearance of the complainant. The operative part of the judgment is reproduced as under:-

“6. Learned Counsel for the petitioner did not dispute that application filed by the petitioner before the Court below for recalling the order was not maintainable and accordingly the same was rightly dismissed by the Court below. However, submission is that this Court under Section 482 of the Code can certainly direct restoration of

*the complaint, which was dismissed in default if sufficient reason is found for his non-appearance on the date fixed. For the purpose he has relied upon the observations made by this Court in **Jitender Bajaj v. Slate (U.T. Chandigarh) and Ors. 2005 CrL.L.J. 3136**, which are reproduced below:*

“...When the Magistrate, in a summon case, has dismissed the complaint and acquitted the accused due to absence of the complainant on the day of hearing, he cannot later on restore the complaint and set aside the order of acquittal, even if the complainant shows very good reasons for his failure to be present on the day of dismissal of the complaint. In such situation, the only remedy available with the complainant is to file appeal or revision against such order or petition under Section 482 of the Code before this Court for setting aside the said order of dismissal of the complaint and acquittal of the accused on the ground that in the given facts and circumstances, the dismissal of the complaint and acquittal of the accused was not justified or there were sufficient reasons for non-appearance of the Complainant before the Court on the date fixed, or the Magistrate has not properly exercised his discretion while not adjourning the complaint and dismissing the same.”

Counsel for the respondent has further argued that the petitioner has shown a bona fide cause for his non-appearance before the trial Court as the petitioner could not deposit the publication charges due to unavoidable circumstances and since the respondent was not served by that date, there was a representation for the respondent, the trial Court should have explored the possibility of either adjourning the case to some other date or to give a notice to the complainant or his counsel for

procuring their presence so as to take a serious view about his absence instead of passing the impugned order.

Counsel for the respondent has further relied upon the judgment ***“Punjab State Warehousing Corporation, Faridkot vs Shree Durga Ji Traders and others”***, 2011(14) SCC 615, wherein the Hon'ble Supreme Court has held that if there is miscarriage of justice, the availability of alternative remedy is not a bar to exercise the inherent power of the High Court under Section 482 Cr.P.C. The operative part of the judgment reads as under:-

“11. Bearing in mind the afore-stated legal position in regard to the scope and width of the power of the High Court under Section 482 of the Code, we are of the opinion that the impugned decision is clearly indefensible. As noted above, the High Court has rejected the petition under Section 482 of the Code on the ground of availability of an alternative remedy without considering the seriousness of the nature of the offences and the fact that the Trial Court had dismissed the complaint on a hyper technical ground viz. since the complainant had been appearing in person, despite order dated 16th April 1999, exempting him from personal appearance, the said exemption order became redundant and the complainant should have sought a fresh exemption from personal appearance. We feel that such a view defies any logic. An order of exemption from personal appearance continues to be in force till it is revoked or recalled.

12. We are convinced that in the instant case, rejection of appellant's petition under Section 482 of the Code has resulted in miscarriage of justice. Availability of an alternative remedy of filing an appeal is not an absolute bar in entertaining a petition under Section 482

of the Code. As aforesaid, one of the circumstances envisaged in the said Section, for exercise of jurisdiction by the High Court is to secure the ends of justice. Undoubtedly, the Trial Court had dismissed the complaint on a technical ground and therefore, interests of justice required the High Court to exercise its jurisdiction to set aside such an order so that the Trial Court could proceed with the trial on merits.

13. Resultantly, the appeal is allowed. The impugned judgment as also the orders of the Chief Judicial Magistrate dated 18th February 2003 and 9th November 2005 are set aside and the complaint filed by the appellant is restored to the file of the Chief Judicial Magistrate. The Chief Judicial Magistrate shall now proceed with the trial after securing the presence of the accused.”

Counsel for the respondent has further argued that even though a revision filed by the complainant was not maintainable before the Court of Sessions, this Court in exercise of inherent powers can still restore the petition in order to prevent the miscarriage of justice.

After hearing the counsel for the parties, I find merit in the present petition to set-aside the impugned order partly. It is well settled principle of law that dismissal of a complaint in default of appearance of the complainant amounts to acquittal of the accused under Section 256 Cr.P.C. and, therefore, the revision before the Court of Sessions was not maintainable as the complainant had a right to file an appeal under Section 378(4) Cr.P.C., thus, the impugned order dated 13.08.2015 passed by the Additional Sessions Judge, Ludhiana is liable to be set-aside on the ground of non-maintainability of the revision petition.

However, the finding recorded by the Revisional Court that the respondent has shown a *bona fide* cause for non-appearance is upheld. Therefore, considering the fact that the petitioner has shown a *bona fide* ground that he could not deposit the publication charges in time, the order of trial Court dismissing the case for non-prosecution, seems to be a very harsh decision. It is not disputed that the petitioner was not served at that stage and the complainant was required to deposit the publication charges for effecting service upon the petitioner/accused so arrayed in the complaint.

In view of the judgments ***Punjab State Warehousing Corporation, Faridkot and Purushotam Mantri's cases (supra)***, I deem it appropriate to exercise *suo moto* inherent power under Section 482 Cr.P.C. to restore the complaint because at this stage issuing a direction or granting permission to the complainant to file an appeal under Section 378(4) Cr.P.C. along with an application under Section 14 of the limitation Act as he was pursuing his remedy before a wrong forum i.e. the Court of Sessions will be harsh, considering the fact that sufficient time of 05 years has lapsed since passing of impugned order.

Therefore, holding that the complainant has shown *bona fide* ground for his non-appearance and the present petitioner/complainant was avoiding service of summons for which the trial Court has fixed the date for effecting the service by way of publication, no prejudice will be caused to the petitioner if the complaint is restored to be decided on merits.

In view of what has been discussed hereinbefore, the present petition is ***partly allowed*** and ***the order dated 13.08.2015 is***

partly set-aside, qua non-maintainability of the revision, however, the complaint is restored on payment of costs of Rs.10,000/- to the petitioner/complainant as litigation charges.

The parties through their counsel are directed to appear before the trial Court on or before 22.04.2019.

(ARVIND SINGH SANGWAN)
JUDGE

18.03.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No