

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

**CRA-AS-88-2019**  
**Date of decision: 27.02.2019**

**CRM-M-15407-2015**  
**[converted into application u/s 378(4) Cr.P.C.]**

**Hardish Kaur**

**...Appellant**

**Versus**

**Baljit Kaur**

**...Respondent**

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Mr. Ramesh Sharma, Advocate  
for the applicant-appellant.

Mr. Amit Dhawan, Advocate  
for the respondent.

**ARVIND SINGH SANGWAN, J. (Oral)**

**CRM-40198-2018**

Prayer in this application is for treating the instant petition,  
filed under Section 482 Cr.P.C., as an application seeking leave to appeal,  
under Section 378(4) Cr.P.C.

For the reasons stated in the application the same is allowed.

Registry is directed to treat the instant petition as an application  
under Section 378(4) Cr.P.C.

Heard.

Leave to appeal granted.

On direction, the Registry has assigned appeal No.  
CRA-AS-88-2019. .

**CRA-AS-88-2019**

Appellant/complainant has prayed for setting aside the order

dated 18.10.2014, vide which, Complaint No. 218/02/2013 (Annexure P-3) was dismissed by the trial Court for non-prosecution; as well as the order dated 25.11.2014 (Annexure P-5), vide which, the application for restoration of the complaint was also dismissed.

It is argued on behalf of the appellant/complainant that appellant/complainant was regularly appearing before the trial Court and since the respondent was not appearing, bailable warrants were issued for procuring the appearance of respondent in the complaint, however, on 18.10.2014, the trial Court dismissed the complaint for non-prosecution as neither the complainant nor her counsel appeared in Court.

It is submitted that appellant/complainant, thereafter, moved an application for restoration of the complaint, however, the same was also dismissed, vide impugned order dated 25.11.2014. Thereafter, the present petition was filed which has now been converted into an appeal.

Learned counsel for the appellant/complainant has argued that on account of noting a wrong date as 18.11.2014 instead of 18.10.2014, the appellant/complainant as well as her counsel could not appear before the trial Court, however, on coming to know about the fact, they immediately moved an application for restoration of the complaint which was also dismissed as noticed above.

Learned counsel for the appellant/complainant further submits that on the date when the case was fixed before the trial Court, it was only for the appearance of the respondent and no effective proceeding was to take place on that day, therefore, the trial Court acted in a very harsh manner by dismissing the complaint without issuing any notice to the

complainant.

Learned counsel for the appellant/complainant further submits that since the complaint was dismissed at the stage when the respondent has not even put in her first appearance, no prejudice will be caused if this appeal is allowed.

In reply, learned counsel for the respondent has submitted that appellant/complainant has failed to show any *bonafide* reason for restoration of the complaint.

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

Admittedly, at the stage when the complaint was dismissed for non-prosecution, it was fixed only for effecting the service upon respondent throughailable warrants as she was not appearing before the trial Court and no effective proceedings were to take place on that very day. Moreover, it is not the case of the respondent that appellant/complainant was not appearing before the trial Court on previous dates too.

It is well settled proposition of law that no one should go unheard and the appellant/complainant has shown *bonafide* grounds for restoration of the complaint.

In view of the above, the present appeal is allowed and the impugned orders dated 18.10.2014 and 25.11.2014 (Annexures P-3 and P-5), passed by the trial Court, are set aside. Consequently, the complaint filed by the appellant is ordered to be restored back to its original number and stage for its decision on merits.

The parties are directed to appear before the trial Court on

28.03.2019.

The trial Court is directed to proceed with the matter from the stage where it was dismissed, in accordance with law.

February 27, 2019  
*Waseem Ansari*

(ARVIND SINGH SANGWAN)  
JUDGE

|                                  |               |
|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |