

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

**CRM-M-36428-2017
DATE OF DECISION:-28.03.2019**

PARAMPREET SINGH

...PETITIONER...

V.

BALJINDER SINGH AND ORS.

...RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Vivek Lamba, Advocate,
for the petitioner.

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

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., the complainant has laid challenge to order dated 02.07.2018 of the trial court, dismissing his complaint in default.

In nutshell, in a complaint filed by the petitioner against the respondents, under Sections 308, 450, 427, 323, 324, 506, 148 and 149 IPC, the respondents were summoned vide order dated 18.04.2012 (Annexure P-2).

Being aggrieved of their summoning, respondents approached this Court vide CRM-M-35365-2012 (O&M), in which, proceedings before the trial court against them was stayed vide order

dated 08.11.2012. The said order of staying the proceedings before the trial court continued up to 02.07.2016, on which date, the complaint of the petitioner was dismissed in default.

Consequently, the petitioner approached the revisional court for restoration of his complaint, but withdrew the same vide order dated 05.06.2018 in view of filing and pendency of instant petition. A certified copy of the same is taken on record.

Learned counsel for the petitioner placing reliance upon judgment titled as ***"Punjab State Warehousing Corporation, Faridkot vs. M/s Sh. Durga Ji Traders and others,"*** 2012(1) RCR (Criminal) 358, contends that trial court has illegally dismissed complaint of the petitioner ignoring the fact that proceedings in the complaint before it was stayed by this Court vide order dated 08.11.2012 (P-3) in aforesaid CRM-M-35365-2012 and also the fact that both the sides were not appearing on account of stay of proceedings.

On the other hand, learned counsel for respondents refuting the above submissions, pleading the legality and validity of impugned order, contends that dismissal of complaint of the petitioner vide impugned order 02.07.2016, amount acquittal of the respondents. Therefore, instant petition under Section 482 Cr.P.C. is not maintainable, because against an order of acquittal, an aggrieved person can only file an appeal. In support of his contention, he has placed reliance upon judgment of Hon'ble Supreme Court, titled as

"V.K. Bhat vs. G. Ravi Kishore and another", 2016(2) RCR (Criminal) 793 as well as of this Court, titled as **"Jitender Bajaj vs. State (UT Chandigarh) and others", 2005(3) RCR (Criminal) 69.**

Having given thoughtful consideration to the rival submissions, this Court finds merit acceptance in the instant petition for the reasons to follow:-

It is not disputed by learned counsel for respondents that proceedings in complaint of the petitioner were stayed in the aforesaid CRM-M-35365 of 2012 vide order dated 08.11.2012 and for that reasons, both the sides were not appearing before trial court, till further orders. In view of above factual aspect, the trial court could not have dismissed the complaint.

Secondly, in similar circumstances, Hon'ble Apex Court has observed in para 9 of the judgment titled as **"Punjab State Warehousing Corporation, Faridkot vs. M/s Sh. Durga Ji Traders and others".**, which reads as under:-

"Bearing in mind the afore-state 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. We are convinced that in the instant case, rejection of appellants 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."

Considering the above observations of the Hon'ble Apex Court, the instant petition is allowed and impugned order dated 02.07.2016 is set aside and the complaint filed by the petitioner is ordered to be restored by the trial court.

In the given facts and circumstances, the authorities relied upon by learned counsel for the respondent being altogether on different issue and distinguishable on the facts of the present case are of no help to him.

Both the sides are directed to appear before the trial court on 10.04.2019 positively, with the direction to trial court to proceed further with the complaint in accordance with law.

28.03.2019
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(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:	Yes/No
whether reportable:	Yes/No