

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

CRM-M-35877-2019

Date of Decision: 27.09.2019

M/s Desh Raj Rajiv Kumar Rice & General Mill and another

...Petitioners

Versus

The District Food and Supplies Controller, Kaithal

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vinod Bhardwaj, Advocate for the petitioners.
Mr. Manish Bansal, DAG, Haryana

ANIL KSHETARPAL, J.

The complaint filed by the respondent under Section 190 Cr.P.C. for taking cognizance of offences under Sections 138 and 141 of the Negotiable Instrument Act, 1881 was dismissed for non-prosecution before order of summoning could be passed.

The learned Judicial Magistrate restored the complaint vide order dated 05.04.2019 while noticing that application has been filed within a period of 30 days.

On 07.09.2019, learned counsel for the petitioner, while relying upon judgment passed by the Hon'ble Supreme Court in the case of **Major General A.S.Gauraya Vs. S.N.Thakur, 1986 AIR (SC) 1440**, has submitted that the Judicial Magistrate has no power to restore the criminal complaint which was dismissed for non-prosecution.

Notice was issued. Reply has been filed.

No doubt, technically argument of learned counsel for the petitioner is correct and Judicial Magistrate, as laid by the Hon'ble Supreme Court, had no power to restore the criminal complaint.

This Court, while exercising the powers under Section 482 Cr.P.C., has to exercise the powers in order to do substantial justice between the parties. Technically the order under challenge is wrong and therefore, the same is set aside. However, this Court invokes its inherent power and restores the complaint for the reasons stated in the application for restoration and the impugned order passed.

In view of the above, the present petition is allowed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

27.09.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No