

CRM-M-39209 of 2014

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

CRM-M-39209 of 2014
Date of Decision: 06.05.2019

Ram Bhaj

...Petitioner

Versus

Sudershan Malik and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Surinder Gandhi, Advocate, for the petitioner.
Mr. Sandeep K. Sharma, Advocate, for the respondents.

RAMENDRA JAIN, J. (ORAL)

Through instant petition under Section 482 Cr.P.C. prayer has been made for setting aside order dated 01.05.2014 of the trial Court whereby complaint of the petitioner under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 500 read with Section 120-B IPC, was dismissed in default.

Learned counsel for the petitioner *inter alia* contends that on 24.03.2014 complaint of the petitioner was adjourned to 01.05.2014 by learned Judicial Magistrate Ist Class, Rohtak. However, inadvertently, learned counsel as well as petitioner-complainant wrongly noted the date as 06.05.2014. Consequently, on 01.05.2014 none put in appearance on behalf of the petitioner-complainant. Therefore, complaint was dismissed in default. Absence of the petitioner was not intentional. In case, complaint is not restored, petitioner will suffer irreparable loss.

On the other hand, learned counsel for the respondent pleaded

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the legality and validity of the impugned order.

Heard.

Perusal of file shows that absence is not intentional. The petitioner is not likely to gain anything for his absence. The reason for non-appearance is that the counsel as well as the petitioner-complainant wrongly noted the date. Thus, it is apparent that as the petitioner is not likely to be benefited from the order and if allowed to stand, it will result in snatching of the substantial right of the petitioner.

In *Om Parkash vs. M/s Golden Forest India Ltd. and others* 2008(4) RCR (Crl.) 445, (P&H) wherein the identical stand was taken i.e. the reason for non-appearance being bona fide, complaint was restored to original number.

In order to render substantial justice and keeping in view the fact that if the order is allowed to stand, it will frustrate the right available to the petitioner. Thus, in view of *Om Parkash's* case (supra), the present petition is allowed. Impugned order dated 01.05.2014 is hereby set aside. The complaint is ordered to be restored to its original number. The parties shall appear before the learned trial Court on 20.05.2019 for further proceedings.

May 06, 2019
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No