

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

CRM-M-10260-2018
Date of decision: 23.01.2020

Brij Mohan Nanda

...Petitioner

Versus

Sudarshan Chandar & others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Vaneet Soni, Advocate
for the petitioner.

Mr. Shiv Kumar Sharma, Advocate
for respondent No. 2.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition, filed under Section 482 Cr.P.C., is for setting aside the order dated 16.07.2014 passed in Criminal Misc. No. 153/2013 dated 20.11.2009; as well as order dated 18.12.2017, passed in CRM-25-2016 dated 17.07.2014, vide which the trial Court/JMIC, S.A.S. Nagar has dismissed the application under Section 340 Cr.P.C. as well as the application for its restoration, respectively, filed by the petitioner.

Learned counsel for the petitioner has referred to order dated 30.05.2014, passed by the trial Court during the pendency of the application filed under Section 340 Cr.P.C. The same reads as under:

“Notice issued to respondents no. 1, 3 4 and 5 received back with the report of locked at premises. I am satisfied that respondents cannot be served by way of ordinary process and therefore be summoned by way of munadi and affixation for 17.07.2014 on deposit of munadi charges at the earliest.”

Learned counsel for the petitioner further submitted that the

case was adjourned for 17.07.2014, however, the case was taken up on 16.07.2014 instead of 17.07.2014 and the following order was passed:

“Munadi for the service of respondents no. 1, 3, 4 and 5 not filed. Rather no one had appeared on behalf of the applicant despite repeatedly calling the case since morning. It is already 3 pm. As such the present application stands dismissed in default. File be consigned to the Record Room.”

Learned counsel for the petitioner further submitted that since the next date fixed was 17.07.2014 and not 16.07.2014, there was no occasion for the petitioner/applicant to appear before the trial Court on 16.07.2014 and, therefore, the dismissal of the said application is not sustainable.

Learned counsel for the petitioner has placed on record certified copies of both the orders.

Learned counsel for respondent No. 2 could not dispute the aforesaid facts.

After hearing learned counsel for the parties, I find merit in the present petition as it well settled principle of law that no one should be condemned unheard.

A perusal of both the impugned orders shows that the case was fixed for 17.07.2014, however, due to some clerical mistake, it was taken up on 16.07.2014 instead of 17.07.2014 and the application was dismissed for non-appearance of the petitioner/applicant.

The petitioner has shown bona fide reason for his non-appearance before the trial Court on 16.07.2014 and, therefore, this Court finds that the impugned orders are not sustainable.

A perusal of order dated 18.12.2017 shows that the application for restoration of the application under Section 340 Cr.P.C. was dismissed on the ground that the Court has no power to restore the complaint as there is no provision in Cr.P.C. for restoration of a criminal complaint.

Accordingly, the present petition is allowed and impugned orders are set aside. The complaint/application is ordered to be restored to its original number and stage and the same shall be decided on merits in accordance with law.

The parties are directed to appear before the trial Court on 10.02.2020.

23.01.2020

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No