

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118

CRM-M-10467-2022

Date of Decision:05.08.2022

Swaran Singh

.....Petitioner

Versus

Lakhwinder Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Ms. Ruchi Sekhri, Advocate for
Ms. Harmandeep Kaur, Advocate,
for the petitioner.

VINOD S. BHARDWAJ , J.(Oral)

Prayer in the instant petition filed under Section 482 of the Code of Criminal Procedure is for quashing the impugned order dated 24.11.2021 (Annexure P-4) vide which the trial Court has dismissed the complaint No.NACT/1299/2021 dated 08.10.2021 (Annexure P-3) for want of prosecution on account of non-appearance of the counsel for the petitioner.

Learned counsel appearing on behalf of the petitioner contends that the complaint, in question, had been instituted on 08.10.2021 for the commission of offence under Section 138 of the Negotiable Instruments Act, 1881 on account of dishonour of the cheque bearing No.000014 for a sum of ₹2,50,000/-.

After institution of the complaint, notice was issued to the

respondent and the case was pending for summoning of the accused-respondent. The matter had been fixed for 24.11.2021, however, the clerk of the counsel for the petitioner wrongly noted the date as 25.11.2021. Resultantly, the petitioner could not appear on the date so fixed and after calling the case for 4-5 times, the same was dismissed for non-prosecution.

Learned counsel for the petitioner contends that no prejudice would be caused to the respondent as he has not yet appeared before the trial Court whereas the absence on the part of the petitioner was solely on account of an error in noting down the date. It was neither intentional nor voluntarily.

I have heard learned counsel for the petitioner and considering that the respondent has not yet put in appearance before the trial Court, I think that there is no necessity to serve the said respondent as the restoration of the complaint to its original number would not *ipso facto* cause any fresh prejudice to the rights of the respondent. In any case, the law has to be constituted liberally and it is also well settled that if a complaint is dismissed for non-prosecution, there is no bar on institution of a fresh complaint. Hence, the right of the complainant to take recourse to the statutory remedy for the offence punishable under the Negotiable Instruments Act, 1881 cannot be permitted to be lost in favour of the respondent-accused merely because the petitioner noted a wrong date and could not put appearance on the date fixed before the trial Court, when it was fixed only for appearance of the respondent and no substantial proceedings were to take place.

In view of the above, the present petition is allowed and the impugned order dated 24.11.2021 (Annexure P-4) passed by the trial Court dismissing the complaint No.NACT/1299/2021 dated 08.10.2021 (Annexure P-3) for want of prosecution on account of non-appearance of the counsel

for the petitioner, is hereby set aside. The complaint is restored to its original number.

The trial Court is directed to proceed further from the stage where the case was already fixed as on the date of passing of the impugned order.

August 05, 2022
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(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No