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

CRM-M-3388-2022

Date of Decision: March 23, 2022

Raseela Begam

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.D.K.Sharma, Advocate, for the petitioner.

Mr.Manish Dadwal, AAG, Haryana.

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RAJESH BHARDWAJ, J.(ORAL)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

The petitioner has approached this Court impugning the order dated 07.07.2021, Annexure P-1, passed by learned Judicial Magistrate Ist Class, Yamuna Nagar, whereby complaint No.236 of 2019 filed by the petitioner under Sections 376, 506 IPC, titled as Raseela Begam versus Khalil etc.,on 28.11.2019, P.S.City Jagadhri, District Yamuna Nagar, has been dismissed for non-prosecution.

Learned counsel for the petitioner has contended that the learned Judicial Magistrate Ist Class, Jagadhari, had illegally declined the prayer of the petitioner. Learned counsel for the petitioner has submitted that the petitioner had filed a criminal complaint under Sections 376 and 506 IPC against the accused Khalil, as the police did not lodge the FIR on her

request. Having failed in lodging the FIR, the petitioner availed the remedy of filing a criminal complaint in which two witnesses stood examined in pre charge evidence and the case was adjourned to 07.07.2021. He has contended that it was informed to the petitioner by her counsel that as per the fresh order, due to the ongoing pandemic, only urgent nature of cases like bail etc. would be taken up. As she was made to understand that the case would be adjourned, she did not appear and later on she came to know that her case had been dismissed for non-prosecution on 07.07.2021. An application for restoration of the same was filed in the Court on 02.08.2021, however, the same was dismissed as withdrawn.

Learned counsel for the petitioner submits that injustice has been caused to the petitioner as in the proceedings of the criminal complaint, two witnesses had already been examined in pre-charge evidence. The petitioner is an illiterate lady and her application for restoration was found to be not maintainable. So it was dismissed as withdrawn vide order dated 17.01.2022. He submits that the view taken by the learned Judicial Magistrate is totally against the law settled and thus deserves to be set aside. He relies upon **Joga Singh vs State of Punjab and others** 2007(1) RCR (Criminal) 770.

Heard.

The precise grievance of the petitioner is that she had filed a criminal complaint under Sections 376 and 506 IPC. However, the same was dismissed in default vide impugned order dated 07.07.2021. Thereafter, the petitioner made an effort for restoration of the same. However, the same was allowed to be dismissed as withdrawn. The case was never decided by the trial Court on merits but the same was dismissed for non-prosecution.

The judicial precedent relied upon by the petitioner laid down that the Court cannot dismiss the complaint in default, however, the same has to be dealt with in accordance with the statutory provisions of Sections 203 and 204 Cr.P.C.

In view of the above, it is apparent that the learned Court of JMIC has fallen in error in dismissing the complaint for non-prosecution. In the peculiar facts and circumstances of the case and the judgment relied upon, the Court concerned is directed to restore the complaint No.236 of 2019, under Sections 376 and 506 IPC, titled as Raseela Begam vs Khalil etc., P.S.City Jagadhri, District Yamuna Nagar to its original number and decide the same after issuing notice to the concerned parties in accordance with the provisions of law.

The petition is allowed in above-mentioned terms.

March 23, 2022
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(RAJESH BHARDWAJ)
JUDGE

- 1. Whether speaking/reasoned ?**
- 2. Whether reportable ?**

Yes/No
Yes/No