

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

CRM-A-817-MA-2016(O&M)

Date of Decision:- 27.04.2022

Raghubir

....Appellant

Vs.

Hori Lal

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Parveen Chauhan, Advocate
for the Appellant.

KARAMJIT SINGH, J.

This is an application filed under Section 378(4) Cr.P.C.
for grant of special leave to appeal against order dated 01.02.2014
passed by Ld. Judicial Magistrate 1st Class, Faridabad.

I have heard the counsel for the applicant and perused
the order.

The application is allowed.

Leave to appeal Granted.

Office is directed to assign appeal number to the case.

The appellant has challenged the order dated 01.02.2014
passed by Ld. Judicial Magistrate 1st Class, Faridabad vide which the
complaint filed by the appellant under Section 138 Negotiable

Instruments Act, has been dismissed in default for want of prosecution.

The counsel for the appellant argued that on the basis of preliminary evidence led by the complainant/appellant, the accused-respondent was summoned by the Trial Court under Section 138 of Negotiable Instruments Act. However, the Trial Court was unable to procure the presence of respondent/accused and finally the Trial Court passed order dated 14.01.2014 directing the appellant to take dasti notice in order to effect the service upon respondent/accused for 01.02.2014. The counsel for the appellant further contended that it being criminal case, the trial Court should have issued bailable or non-bailable warrants of the respondent/ accused in accordance with law. It was not possible for the appellant to serve dasti notice upon the respondent/ accused. He further contended that the counsel for appellant was present on 01.02.2014 but despite his presence the criminal complaint was dismissed for want of prosecution. He further contended that the aforesaid orders dated 14.01.2014 and 01.02.2014 are liable to be set aside being totally illegal.

I have considered the aforesaid assertions made by the counsel for the appellant .

Admittedly, the appellant filed criminal complaint titled Raghubir Vs. Hori Lal under Section 138 of Negotiable Instruments Act. On completion of preliminary evidence the trial Court passed summoning order against the respondent/accused but failed to

procure his presence. On this the trial Court passed the following order dated 14.01.2014:-

‘Present:- Sh.R.K. Yadav, Adv for complainant.

Notice issued to the accused not received back in any form. Now fresh notice to accused be issued for 1.2.2014. One last and final opportunity is granted to complainant to take dasti notice for accused for date fixed failing which the present complaint shall be liable to be dismissed for want of prosecution.

Sd/-JMIC/Faridabad-14.1.2014’

This Court is of the view that if the trial Court was unable to procure the presence of respondent/accused, it should have issued his bailable or non-bailable warrants as per the situation so warrants. In place of issuance of bailable or non bailable warrants, the trial Court placed onus on the appellant to serve dasti notice to respondent/accused for 01.02.2014, failing which the complaint shall be liable to be dismissed for want of prosecution. To my mind issuance of such dasti notice to be served by the complainant on the accused in a criminal matter is not warranted under law.

Finally, the trial Court passed the impugned order dated 01.02.2014 which reads as follows:-

“‘Present:- Sh.R.K. Yadav, Adv for complainant.

Complainant has failed to take dasti notice of accused as ordered vide last order dated 14.1.2014. From the perusal of the case filed, it is clear that sufficient number of opportunities have been availed by the complainant but he has till date, failed to take the dasti notice of accused. In such circumstances, no ground is made out to grant any further adjournment in the present case and the present case is hereby dismissed for want of prosecution. File be consigned to the record room, after due compliance.

Sd/JMIC/F.bad 1.2.2014”

The aforesaid order was passed by the trial Court in presence of the counsel for the complainant. As per law there was no occasion for the appellant to collect the dasti notice which was to be served upon the respondent/accused in compliance of the order dated 14.01.2014 passed by the Trial Court. This Court has already observed that order dated 14.01.2014 passed by the Trial Court is not sustainable in the eyes of law.

Admittedly, the appellant had not gained anything by remaining absent on the date fixed in the trial Court. There is nothing to show that there was any mala fide intention on the part of the appellant for his absence from the proceedings before the trial court on the date fixed. Nothing is available on record to show that previously also the appellant defaulted in the similar manner. So there was only single default on the part of the appellant , on account

of which the complaint filed by him under Section 138 Negotiable Instruments Act, dismissed by the trial court for want of prosecution. The absence of the appellant on one date in the complaint case is no ground to dismiss the complaint. *The Hon'ble Apex Court in Mohd. Azeem Versus A. Venkatesh and another (2002) 7 SCC 726* has held that one singular default in appearance on the part of complainant, dismissal of complaint is not proper.

In the light of the above discussion, I find merit in this appeal and the same is allowed. The impugned order passed by Judicial Magistrate 1st Class, Faridabad, 01.02.2014 dismissing the complaint for want of prosecution is hereby set aside subject to cost of Rs.5000/-to be deposited by the appellant with the District Legal Services Authority, Faridabad. The appellant is directed to appear before the Trial Court within a period of 30 days from today.

The complaint is ordered to be restored at the stage from where it was dismissed by the trial court. The Trial Court is directed to proceed further from that stage, as per law and not to ask the appellant to serve dasti notice on respondent/accused.

27.04.2022
P. Chawla

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No