

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

Date of decision: 10.11.2022

1. CRM-A-837-MA-2015 (O&M)

M/s Tara Health Foods Ltd.

....Appellant

Versus

Bhagat Singh

....Respondent

2. CRM-A-710-MA-2015 (O&M)

M/s Tara Health Foods Ltd.

....Appellant

Versus

Onkar Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

**Present: Mr. P.S. Punia, Advocate
for the appellant (in both cases).**

**Mr. K.G. Chaudhary, Advocate
for the respondent (in CRM-A-837-MA-2015).**

None for the respondent (in CRM-A-710-MA-2015).

ARVIND SINGH SANGWAN, J. (Oral)

Challenge in both these appeals is to the orders dated 07.10.2014 passed by the Judicial Magistrate 1st Class, Ludhiana, vide which the complaints filed by the appellant under Section 138 of Negotiable Instruments Act, 1881 were dismissed for non-prosecution and the respondents-accused were acquitted.

Learned counsel for the appellant has argued that the complaints were dismissed by the trial Court, primarily on the ground that the appellant-complainant could not produce any evidence in its support. The operative part of the impugned order reads as under: -

“Personal appearance of the accused is exempted for today only in view of the reason assigned in the exemption application.

No CW is present in spite of extra last opportunity. Previous costs not paid. Perusal of the file reveals that the case has been lingering on for CW since 16.04.2014 and even since then numerous opportunities have been availed but complainant has failed to conclude his evidence and also failed to produce even a single witness till the date. This Court is satisfied that complainant is not interested in pursuing the present complaint. Accordingly, the complainant evidence at the post summoning stage is closed by order and present

complaint is dismissed for want of proper prosecution. There is no incriminating evidence against the accused. Accused is acquitted. His bail bond and surety bond are ordered to be discharged. File be consigned to record room after due compliance.”

Learned counsel has further argued that the trial Court has noticed a fact that the cases were pending since 2014, whereas the correct facts are that the appellant-complainant instituted the aforesaid complaints on account of dishonouring of cheque of Rs.4,68,240/- issued by accused Bhagat Singh and cheque of Rs.3,07,076/- issued by accused Onkar Singh. Thereafter, both the cases were fixed for summoning the accused and despite issuance ofailable and non-ailable warrants, they failed to appear. It is also submitted that the accused, for the first time, appeared on 11.03.2014 through their counsel and were granted bail. Again on the subsequent dates, applications were filed for grant of exemption from personal appearance, which were allowed subject to payment of costs of Rs.500/-, as per the order dated 01.05.2014 and the cases were fixed for the prosecution evidence.

It is next submitted that along with the complaints, the appellant submitted a list of witnesses, in which three witnesses have been cited i.e. the complainant himself, a Clerk from the State Bank of India and a Clerk from the Central Bank of India and for the purpose of their examination, the appellant needs only two effective opportunities. It is also

submitted that the trial Court has adopted a harsh view in closing the evidence and dismissing the complaints, as the respondents-accused could be compensated by way of costs for that purpose.

Learned counsel for respondent Bharat Singh, in CRM-A-837-MA-2015, could not dispute the factual position, however, submitted that the complainant-appellant could not lead any evidence and the trial Court has rightly closed the evidence and dismissed the complaint.

As per office report, respondent Onkar Singh is served through affixation on the door of his residence, however, there is no representation on his behalf.

After hearing learned counsel for the parties and considering the fact that there was no adjudication on merits by the trial Court and the complaints were dismissed summarily on the ground that the complainant could not lead any evidence, without referring to the fact that the respondents-accused put in appearance only in March, 2014 and thereafter, some exemption applications were also filed, therefore, entire delay could not be attributed to the appellant-complainant alone.

Accordingly, both these appeals are allowed and the impugned orders dated 07.10.2014 are set aside. The matter is remanded back to the Judicial Magistrate 1st Class, Ludhiana for afresh decision, subject payment of costs of Rs.10,000/- each case.

The trial Court is directed to afford two effective opportunities to the appellant-complainant to lead its evidence and thereafter, sufficient

opportunity be granted to the respondents-accused to lead their defence evidence, in accordance with law.

The parties are directed to appear before the Judicial Magistrate 1st Class, Ludhiana on 01.12.2022.

Considering the fact that original complaints pertain to the year 2013, it is directed that the trial Court will conclude the trial expeditiously preferably within a period of one year from today.

Disposed of, accordingly.

A photocopy of this order be placed on file of connected case.

10.11.2022
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No