

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

240

CRM-M-11654-2018
Date of decision: 06.12.2022

BHOLA SINGH

....Petitioner

Versus

STATE OF PUNJAB AND ANR.

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. G.S. Sidhu Advocate
for the petitioner.

Mr. Kamalpreet Bawa, AAG Punjab.

AMAN CHAUDHARY. J.

Present petition has been filed for setting aside the order 09.08.2017 passed by learned Additional Sessions Judge, Barnala, whereby the revision preferred by the petitioner was dismissed in default for want of prosecution and for restoration of CRR-06/14.03.2017.

Briefly put, the complainant had filed criminal complaint under Sections 494, 420 and 120-B IPC. The petitioner was married with respondent No.2-Raj Kaur on 21.12.2005. After marriage he came to know that she earlier was married with one Naib Dass S/o Chottu Dass. However, respondent No.2 used to quarrel with the petitioner and about four years prior to the year of filing of the complaint, she left the matrimonial home. The petitioner came to know that respondent No.2 had married with one Jaswant Singh, without taking valid and legal divorce from the petitioner, which was in active connivance with co-accused. The petitioner approached SSP Barnala vide application dated 04.08.2012, but the police had neither investigated the matter nor had taken any

action against the accused persons.

Learned counsel for the petitioner has submitted that the aforesaid complaint against respondent No.2 came to be dismissed vide judgment dated 27.02.2017 by the Judicial Magistrate Ist Class, Barnala. Therefore, the petitioner filed a revision against the said order, which was also wrongly dismissed in default for want of prosecution on 09.08.2017, as neither the petitioner nor anyone on his behalf was present. It is his submission that the court below ought to have heard the matter on merit and not dismissed the same in default. The solitary ground raised in the present petition for non-appearance of the petitioner is that he had inadvertently noted down the date of hearing as 02.09.2017, and due to fault of his counsel, neither the petitioner nor his counsel appeared in the said case. He thus submitted that sufficient reason has been shown on account of which he was unable to appear, as such prays that the order dated 09.08.2017 be set aside and the case be restored to its original number and heard on merits.

Mr. Kamalpreet Bawa, AAG Punjab submits that the petitioner had half heartedly pursued the case as the complaint was dismissed by the trial Court on 27.02.2017, whereafter he did not cause appearance before the Court on 09.08.2017 and it has been rightly dismissed for non-prosecution after noticing the fact that the petitioner had been called a number of times since morning and the Court had waited till 2:30 PM, still none had appeared on behalf of the petitioner. He submits that the impugned order is legal and valid. He further submits that the present petition had been filed after a period of more than 07 months.

Heard.

The order dated 9.8.2017 dismissing the criminal revision filed by the

petitioner reads thus:

“This petition is called for a number of time since morning. Now it is 02.30 pm, the petition is again called but none appeared on behalf of the petitioner. Hence, this petition stands dismissed in default for want of prosecution. File be consigned to the record room.”

A perusal of the impugned order reveals that though the petitioner and counsel were absent, respondent No.2-Raj Kaur was present in person along with her counsel Ms. Bhawana Markanda, Advocate. The petitioner has been unable to substantiate the reason for his non-appearance except for a bald statement that wrong date been noted of the case. The petitioner has not even been prompt in filing the present petition challenging the said order, as it was filed on 12.03.2018 i.e. after a delay of 7 months, for which also there is no cause shown, much less sufficient. Moreover, the trial Court had duly considered the evidence putforth by the petitioner to prove the allegations made in the complaint with regard to marriage of respondent No.2 Jaswant Singh, however, the same was found to be insufficient. Operative part of judgment dated 27.2.2017 passed by learned JMIC, Barnala reads thus:-

“7. Perusal of the file shows that complainant had not advanced sufficient evidence to show that accused Raj Kaur had performed second marriage without divorcing the complainant. It is accusation that she has married to Jaswant Singh. Complainant relied upon Ex.C3 which is the register of births showing entry of the newly born boy and the name of the father is shown as Jaswant Singh and the mother name as Raj Kaur. It is evident on face of it as to the fact that complainant had failed to show that she is the same Raj Kaur which is reflected in

Ex.C3. Moreover, it does not show even prima facie that Raj Kaur had married to Jaswant Singh. This document does not prove prima-facie that Raj Kaur had performed second marriage without divorcing her husband who is the complainant. The oral evidence presented by complainant also does not prima-facie prove the said fact. Hence, in view of the insufficient evidence, no ground is made out to frame charge against the accused u/s 494 IPC. Accused is hereby discharge. Accused and his surety be released from his bail bonds and surety bonds. File be consigned to the record room after due compliance of the necessary formalities.”

In view of the above, this Court finds no merit in the present petition and as such, the same is dismissed.

(AMAN CHAUDHARY)
JUDGE

December 06, 2022

S.Sharma(syr)/GSV

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No