

CRM-M-21231-2018

:1:

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

286

CRM-M-21231-2018

Date of Decision: November 17, 2022

RAJAN DHAWAN

...Petitioner

Versus

ASHWANI DHAWAN AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Ms. Amandeep Soni, Advocate
for the petitioner.

Mr. Sanjeev Roy, Advocate
for the respondents.

AMAN CHAUDHARY, J.

The present petition under Section 482 of Cr.P.C. has been filed for quashing of order dated 09.05.2018 (Annexure P-4) passed by learned Additional Sessions Judge, Jalandhar, whereby learned Court has dismissed the revision filed by the petitioner against the order dated 19.08.2017 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Jalandhar in a complaint No.COMI575/14 dated 22.12.2014.

Learned counsel for the petitioner contends that the pre charge evidence in the complaint filed by the petitioner was closed by order dated 19.08.2017 on the ground that the despite sufficient opportunities, the complainant was unable to conclude the pre charge evidence and the Court found no justification for adjourning the matter further. She further contends the said order became subject matter of challenge before the Court of

Additional Sessions Judge which was also dismissed vide order dated 09.05.2018 on the ground that 11 effective opportunities spanning over more than 1 ½ year had been granted and that on 19.08.2017, the counsel for the petitioner failed to appear before the trial Court on account of no work day having been observed by the Jalandhar District Bar Association. Learned counsel further contends that due to the fault of the counsel, the complainant should not be made to suffer.

Learned counsel for the respondent on the other hand, contends that the order passed was legal and valid inasmuch opportunities had already been granted to the petitioner.

Heard.

Hon'ble the Supreme Court of India in case of '**Rafiq and another vs. Munshilal and another**' reported as AIR 1981 SC 140, held thus:-

“What is the fault of the party who having done everything in his power expected of him, would because of his advocate... The problem that agitates us is whether it is proper that a party should suffer for the inaction, deliberate omission, or misdemeanour of his agent... We cannot be a party to an innocent party suffering injustice merely because of his chosen advocate defaulted.”

Similar view has been reiterated in **Tahil Ram Issardas Sadarangani and Ors. v. Ramchandra Issardas Sadarangani and Anr.** **AIR 1993 SC 1182** and **Malkiat Singh and Anr. v. Joginder Singh and Ors.** **AIR 1998 SC 258**, observing that in case a litigant is neither negligent nor careless in prosecuting his case but his lawyer pleads no instruction, the Court should issue notice to him to make an alternative arrangement. Such a

course is required in the interest of justice and the Court may proceed from the stage the earlier counsel pleaded no instruction. If the litigant is not at fault, he should not suffer for such a conduct of his counsel.

In view of the facts and circumstances of the case that in the law laid down that the complainant cannot suffer due to the fault of the counsel, one opportunity is granted to lead the pre charge evidence, subject to cost of Rs.10,000/- to be paid to the accused.

Payment of costs shall be the condition precedent for granting any indulgence by the trial Court.

Disposed of.

November 17, 2022
rimpal

(AMAN CHAUDHARY)
JUDGE

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