

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

265

CRA-AS-253-2022

CRM-A-156-MA-2017

Date of decision: 08.09.2022

M/S ZAMIDARA ENGINEERING & AUTOS (P) LTD Applicant

Versus

MOHIT SOOD & ANOTHER Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Gaurav Chopra, Sr. Advocate with
Mr. Saurabh Jain, Advocate for the applicant.

Mr. R.C.Sharma, Advocate for the respondents.

PANKAJ JAIN, J. (oral)

CRM-A-156-MA-2017

The instant application has been filed under Section 378(3) Cr.P.C. for leave to appeal against the impugned order dated 02.07.2013 passed by the Judicial Magistrate 1st Class, Chandigarh vide which the complaint under Section 138 of the Negotiable Instruments Act, 1881 filed by the appellant was dismissed for non-prosecution.

Learned counsel for the applicant submits that he was the complainant in the said case and as such is entitled to prefer an appeal against an order so passed by the trial Court. Upon considering the submissions, the instant application is allowed and leave to prefer appeal is granted to the applicant.

Registry is directed to assign the number to the instant appeal forthwith.

Main case

This appeal is filed at the behest of the complainant against the impugned order dated 02.07.2013 whereby, the complaint filed by the

appellant was dismissed for non-prosecution, resorting to the provisions of Section 256 Cr.P.C. The present appellant filed complaint under Section 138 of the Negotiable Instruments Act, 1881 on 27.10.2004. The said complaint culminated into an order of conviction dated 17.12.2010. The said order was taken in appeal by the accused-respondent. The appeal was allowed vide order dated 09.01.2013 whereby, the Appellate Court had set aside the order of conviction. The parties were directed to appear before the trial Court with their respective counsel on 20.01.2013. It is apposite to note that the respondent in the appeal i.e. the complainant-appellant was proceeded *ex parte* during the said appeal. None of the parties appeared on 20.01.2013 and they were ordered to be summoned by the trial Court for 10.04.2013. On 10.04.2013, accused appeared through his counsel. However, the complainant was not served and consequently, he did not appear. Thereafter, the matter was adjourned to 06.06.2013 and the complainant was again ordered to be summoned through his counsel. On 06.06.2013, nobody appeared on behalf of the complainant as he could not again be served. On 15.06.2013, the following order was passed.

“ Instant complaint has been remanded back by the learned Addl. Sessions Judge to be tried afresh. On account of non appearance of complainant and his counsel, the Court notice was issued to them on 10.04.2013. The Notice sent to the complainant was received back with the report that he has already left the given address. Thereafter, the notice was got issued to his counsel on the last date i.e.6.6.2013. Notice sent to counsel for the complainant was received back unserved and even the notice sent to three counsels who have signed on the POA has been received back unserved with the report that they are not practicing in the Distt. Court, Chandigarh. Perusal of process reveals that there is another address of PKL and it appears that process server has not

visited said address. So as to secure proper service of counsel for complainant, this Court finds it proper to issue another notice to the address of counsel for the complainant at PKL for 2.7.2013.”

Surprisingly, without their being any valid service in the eyes of the law, the complaint was dismissed on 02.07.2013 by passing the following order:-

“ Another notice sent to counsel for complainant at his address of Panchkula received back with the report that he was intimated on telephone who assured to appear in the Court. But he failed to appear in the Court today despite the case being called several times. Thus, it seems that none is interested in pursuing the present complaint. Accordingly, the present complaint is hereby dismissed for non prosecution under Section 256 Cr.P.C. File be consigned to the record room.”

Learned counsel for the applicant thus, submits that whole of the procedure adopted by the trial Court while resorting to two reasons contained in Section 256 Cr.P.C. is foreign to criminal jurisprudence. He submits that mere assurance made by the counsel earlier representing the complainant that he shall appear on 02.07.2013, has been made basis for dismissing the complaint for non prosecution.

Learned counsel for the respondent is not in a position to dispute the aforesaid factual assertion which is based on records of the case.

I have heard learned counsel for the parties and have carefully gone through record of the case. Facts are not in dispute. It is not in dispute that after conviction the appellant-complainant remained unserved throughout. He was not served through ordinary mode for his appearance. Even in the appeal, he was ordered to be served through substitute mode of service, which is in any way a weak mode of service. Be that as it may, the fact remained that after remand the appellant could never be served.

In view of the absence of the service, in the considered opinion of this Court, the trial Court ought not have resorted to provisions contained under Section 256 Cr.P.C., which entails acquittal.

As a sequel of discussion held hereinabove, the impugned order dated 02.07.2013 is set aside. The parties are now directed to appear before the Court of JMIC, Chandigarh on 23.09.2022. Owing to the fact that the present complaint relates to year 2004, the trial Court is directed to decide the complaint expeditiously, preferably within six months from the date of the appearance of the parties.

(PANKAJ JAIN)
JUDGE

September 08, 2022

Jyoti-IV

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