

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-8345-2022(O & M)

Date of decision:01.03.2023

Baljit Kaur

..... Petitioner

V/s

State of Punjab and anr.

...Respondent

**CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. N.S. Dandiwal, Advocate,  
for the petitioner.

Ms. Navreet Kaur Barnala, AAG, Punjab.

None for respondent No.2.

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**JASJIT SINGH BEDI, J. (Oral)**

The prayer in the present petition under Section 482 Cr.P.C. is for the quashing of the order dated 09.11.2021 passed by the Judicial Magistrate Ist Class, Moga (Annexure P-2) vide which the complaint bearing No.COMI/89/2017 instituted on 16.10.2017 titled as 'Baljit Kaur versus Jyoti' under Sections 279, 337, 338, 427 IPC filed by the petitioner-complainant has been dismissed for want of prosecution.

2. The brief facts of the case are that the petitioner-complainant instituted a complaint under Sections 279, 337, 338, 427 IPC against the respondent No.2. A copy of the aforesaid complaint is attached as Annexure P-1 to the present petition.

3. During the course of recording of preliminary evidence, the statements of 08 witnesses from the side of the petitioner-complainant were recorded and only the statements of the police officials remained to be recorded. The petitioner was stated to be diligently appearing before the

Trial Court on every date but on 09.11.2021, the complaint was dismissed in default for want of prosecution vide order dated 09.11.2021 (Annexure P-2).

The said order is under challenge in the present petition.

4. The learned counsel for the petitioner contends that the petitioner has been pursuing the case since the year 2017. However, the case was adjourned for consideration to 09.11.2021. Inadvertently, the counsel for the petitioner noted the date of the case as 11.11.2021 because of which the impugned order came to be passed. He, therefore, contends that the said order be set aside and the case be remanded back to the Magistrate concerned for taking it back on the file and disposal in accordance with law. Reliance is placed on the judgment in '**Murali Lal versus Madan Lal and others, 1996(2) RCR (Criminal) 657**'.

5. None appears for the respondent No.2 despite service.

6. The learned counsel for the State contends that since the petitioner has been diligently pursuing his remedy in accordance with the law, an opportunity can be provided to him to lead his evidence, and thereafter, the Court can proceed to dispose of the case.

7. I have heard the learned counsel for the parties.

8. In the case of "**Murali Lal versus Madan Lal and others, 1996(2) RCR (Criminal) 657**", this Court held as under:-

*"4. I have heard the counsel for both the sides. As rightly contended by the learned counsel for the petitioner, the fact that the petitioner was serious about the conduct of proceedings is apparent from the fact that he had examined five witnesses before the respondents were summoned, and it is also his allegation that he had been attending the court on all the hearings except the one when the case was dismissed for default. The case of the petitioner that he mistook the date as 28.2.95 instead of 23.2.95 is also probalised from the fact*

*that he had applied on 28.2.1995 for copy of the order of learned Magistrate dismissing his complaint. Therefore, taking into consideration all these aspects I am of the opinion that the contention of the petitioner that he had mistaken the date of hearing as 28.2.95 must be true and that his absence on 23.2.95 was due to a bonafide mistake.*

*5. The learned counsel for the respondents relied upon a decision of this Court in Gurjant Singh v. Shri Ranjodh Singh, (1977) 4 Cr. L.T. 305 to support his contention that the dismissal was only proper. What happened in that case was that neither the complainant nor his counsel was present on some of the adjourned dates, and, therefore, the accused moved a petition under section 256(1) of the Code of Criminal Procedure, 1973 for acquitting them (accused). But, the Magistrate instead of doing so, adjourned the case without recording any reason. The accused approached this Court under Section 482 Criminal Procedure Code, 1973 for quashing the proceedings against them. It was in those circumstances held that when the complainant and his counsel were not present in Court (and since the Magistrate had adjourned the case without recording any reason) the Magistrate had no option but to acquit the accused. So, the proceedings were quashed. But, the Magistrate concerned in this case has not proceeded under Section 256(1) of the Criminal Procedure Code and acquitted the accused. He has dismissed the complaint for default. Therefore, I am of the opinion that this decision will not help the respondents.*

*6. In these circumstances, it cannot be stated this petition under section 482 Criminal Procedure Code, 1973 is not maintainable. I feel that the order of dismissal of the complaint should be set aside and the case should be sent back to the trial Magistrate for proceeding further with the case”.*

9. A perusal of the record would show that the complainant filed

extent that the statements of 08 witnesses already stand recorded. It appears that on account of an oversight on the part of the counsel for the petitioner, the petitioner-complainant was unable to appear on one date i.e. 09.11.2021 on which date, the impugned order (Annexure P-2) came to be passed.

10. In view of the above discussion, the present petition is allowed. The order dated 09.11.2021 (Annexure P-2) is quashed and the case is remanded back to the Judicial Magistrate Ist Class concerned for taking it back on the file and for subsequent disposal according to the law.

( JASJIT SINGH BEDI)  
JUDGE

March 01, 2023  
sukhpreet

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