

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

254 CRM-M-14740-2013
Date of Decision: 01.05.2023

Grish Sharma Petitioner
Versus
State of Haryana and another Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present Mr. Bhupinder Ghai, Legal Aid Counsel for the petitioner.
Mr. Manish Bansal, D.A.G, Haryana.
Mr. Nitish Sharma, Advocate for respondent No. 2.

ANOOP CHITKARA, J. (ORAL)

Dissatisfied by the dismissal of his complaint filed under Section 138 of Negotiable Instruments Act for want of the complainant’s appearance and further dismissal of the revision filed before the Sessions Court, the complainant had come up before this Court by filing the present petition which bears the date 01.05.2013.

2. After 08.12.2022, counsel for the petitioner stopped appearing and as such, this Court had appointed a legal aid counsel.

3. I have heard counsel for the parties and gone through the petition. On 22.07.2010, learned JMIC, Faridabad dismissed the petitioner’s complaint because of the absence of the complainant. Prior to that, the concerned Judicial Magistrate had given reasoning about the accused to be discharged. However, she stopped at that point and instead of discharging the accused on merits, dismissed the petition in default.

4. Challenging the said order, instead of coming to this Court under Section 378 (4) Cr.P.C., the complainant filed a criminal revision. Vide judgment dated 23.04.2012, learned Sessions Court dismissed the revision for want of jurisdiction. Aggrieved by that, the petitioner had come up before this Court under Section 482 Cr.P.C.

5. This Court treats the present petition under Section 482 Cr.P.C as a petition under Section 378 (4) Cr.P.C. and based on such provision, this Court is proceeding further. Although, the trial Court was convinced that the accused need to be discharged but instead of passing the said order, she dismissed the complaint in default. The complainant’s stand was that he did not get avail opportunity to prosecute his complaint and earlier the respondent was absent on so many occasions and at that time, the Court accommodated him and was lenient but when the complainant was absent it was dismissed in default.
6. Be that as it may, this Court is not in concurrence with the grounds taken by the petitioner. However, a perusal of the impugned order dated 22.07.2010 does not mention that for how much time the Court waited for the complainant. The petitioner’s stand was that the case was earlier listed on 15.02.2010, when the Judge was on leave and the matter had been adjourned to 20.07.2010 and due to said confusion, he did not come to know about the date because it was not conveyed to him. He submitted that in case the Judge was not on leave there was no reason for him to miss the date.
7. I am satisfied with the explanation offered in the present petition. Given above, the present petition is allowed and the impugned order dated 22.07.2010 and also the judgment dated 23.04.2012 passed by the Sessions Judge are quashed and set aside. The matter is remanded back to the trial Court. The parties are directed to appear before the trial Court on 15.05.2023. In case, the trial Court puts notice of accusation to the accused and does not discharge him, then in such an eventuality, the trial shall be completed on the top most priority. Further, the proceedings till the stage of notice of accusation also be taken on top priority.

(ANOOP CHITKARA)
JUDGE

01.05.2023
Jyoti-II

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No