

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

249

CRM-M-9805-2020

Date of decision: 25.09.2023

Parmod Kumar

...Petitioner

Versus

Ranjit Singh @ Rana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Charanjit Sharma, Advocate for the petitioner

Mr.Nitin Sharma, Advocate for the respondent

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for setting aside order dated 01.11.2019, passed by learned Additional Sessions Judge, Ferozepur, dismissing the revision filed by the petitioner against the order dated 01.08.2018, passed by Chief Judicial Magistrate, Ferozepur vide which the complaint bearing No.NACT/2485-2013 of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act'), was dismissed in default for want of prosecution.

2. Learned counsel for the petitioner would submit that the trial Court had wrongly dismissed the complaint in default without taking into consideration that it was being pursued properly and had reached the stage of recording the evidence. He was unable to attend on account of being unwell and had even informed his counsel but who also could not appear.

His absence was neither intentional nor willful and he would have gained nothing by absenting or delaying the proceedings, which as a matter of fact, had been pending since 2013.

3. On the other hand, learned counsel for the respondent submits that the revision petition filed to set aside the order of dismissal by trial Court was not maintainable, it having resulted in discharge of the accused, as an appeal under Section 378(4) CrPC ought to have been filed before the Additional Sessions Judge.

4. Heard the learned counsel on either side.

5. It is apposite to make a reference to Section 256 CrPC, which reads thus:

“256. Non- appearance or death of complainant.

(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day: Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub- section (1) shall, so far as may be, apply also to cases where the non- appearance of the complainant is due to his death.”

6. Bare reading of the aforesaid provision *expressis verbis* reveals that Section 256 Cr.P.C. comes into play only at the post-summoning stage. Manifest it is that the Magistrate had plentitude power in the matter of dismissal of a complaint for non-prosecution and to proceed with the case, despite the absence of the complainant, in the eventuality he comes to a conclusion that the attendance of the complainant, who if represented

through by a pleader or by officer conducting the prosecution was not necessary on that particular day, or adjourn the same, of course on some plausible grounds, however, while exercising his discretion, in case he decides to dismiss the same in default for want of prosecution at such a juncture, the upshot of which would be acquittal of the accused.

7. As is borne out from the facts of the present case in the complaint instituted under Section 138 NI Act, wherein after the issuance of the summoning order, the accused-respondent, was declared proclaimed person but subsequently having joined the proceedings was granted bail and on 27.07.2018, notice of accusation was served, to which he pleaded not guilty. It is thereafter, on 01.08.2018, the petitioner and his counsel were unable to cause appearance before the trial Court and no application seeking exemption from personal appearance was filed, that led to the complaint being dismissed in default for want of prosecution and discharge of the accused.

8. In **V.K. Bhat vs. G.Ravi Kishore and another**, (2016) 13 SCC 243, Hon'ble The Supreme Court considering the question as to whether in a case where the complaint was dismissed, the same tantamounts to acquittal and in such a situation whether a revision would lie under Section 397(3) CrPC or an appeal under Section 378(4) Cr.P.C., held that, "After hearing the learned counsel for the parties, we find that there is some force in the submissions made by learned counsel appearing for the appellant and we hold, in the facts of the case, that dismissal of the complaint for non-prosecution of the complainant amounts to acquittal as contemplated in section 256 of the Code of Criminal Procedure, 1973."

9. The petitioner instead of filing an appeal under Section 378(4)

Cr.P.C., unsuccessfully preferred a revision challenging the order dated 01.08.2018, which was otherwise not maintainable, the respondent having been discharged, there being a clear distinction drawn as per Section 256 Cr.P.C. and the afore-referred judgment as regards the stage of dismissal of complaint for non-prosecution prior to and after issuance of the order of summoning. Therefore, this Court finds the present petition not maintainable and is as such, dismissed. However, reserving the petitioner a liberty to pursue the remedy, in accordance with law.

21.09.2023

gsv

**(AMAN CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No