

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-24076-2014

Date of decision : 14.03.2023

BEANT SINGH

... Petitioner

Versus

KRISHNA KUMARI

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vivek Salathia, Amicus curiae
for the petitioner.

Mr. Amandeep Singh, Advocate
for the respondent.

JASJIT SINGH BEDI, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the judgment/order dated 21.03.2013 (Annexure P-3), whereby the revision petition filed by the revisionist/accused has been accepted and the order of the Trial Court restoring the complaint No.82-A of 27.01.2006 titled as Beant Singh Versus Smt. Krishna Kumari has been set aside.

2. The brief facts of the case are that the petitioner/complainant (hereinafter known as the petitioner) filed a complaint under Section 138 of the Negotiable Instruments Act against the respondent/accused namely, Krishna Kumari (hereinafter known as the respondent). During the proceedings, the respondent was summoned to face trial and accordingly the evidence was led. However, when the Trial was at the stage of recording of the statement of the respondent under Section 313 Cr.P.C. the petitioner could not appear on the date fixed as he is stated to

appearance of the petitioner dismissed the complaint in default vide order dated 20.05.2009.

3. The petitioner challenged the said order by moving an application for restoration of the complaint. The application was allowed and the complaint was restored to its original number on the payment of Rs.1000/- as cost. The copy of the said order dated 14.07.2011 is attached as Annexure P-2 to the petition.

4. Against the aforementioned order of the Magistrate, whereby the complaint was ordered to be restored, the respondent filed a revision petition and the order of restoration of the complaint dated 14.07.2011 was set aside and the dismissal of the complaint was upheld. However, liberty was granted to the complainant-petitioner to pursue his lawful remedy for restoration of the complaint or for setting aside the acquittal of the respondent/accused. A copy of the order dated 21.03.2013 is attached as Annexure P-3 to the petition.

It is this order which is impugned in the present petition.

5. The instant petition had been filed way back in the year 2014. None has been appearing on behalf of the petitioner for the last 03 years and therefore on 09.11.2022, Mr. Vivek Salathia, Advocate was appointed as Amicus Curiae to assist this Court.

6. The learned counsel Amicus Curiae for the petitioner relying on Section 256 Cr.P.C. and the judgments of the Hon'ble Supreme Court in case of **Bindeshwari Prasad Singh Versus Kali Singh, Criminal Appeal No.74 of 1976 decided on 05.08.1976, Major General A.S. Gauraya Versus S.N. Thakur, 1988(1) R.C.R. (Criminal) 3, Mohd. Azeem Versus A. Venkatesh & another, Criminal Appeal No.839 of**

2002, decided on 16.08.2002, S. Anand Versus Vasumathi Chandrasekar, Criminal Appeal No.311 of 2008, decided on 14.02.2008, V.K. Bhat Versus G. Ravi Kishore & another, 2016(2) R.C.R. (Criminal) 793 and Ganesh Patel Versus Umakant Rajoria, S.L.P. (Crl.) No.9313 of 2021, decided on 07.03.2022 and this Court in Jitender Bajaj Versus State (U.T. Chandigarh) & others, 2005(3) R.C.R. (Criminal) 69, Daya Kishan & another Versus Banarsi Dass, 2010(2) R.C.R. (Criminal) 451 and Parkash Singh Versus Harpal Singh, CRR-402-2017, decided on 13.01.2023 contends that no fault can be found with the impugned order dated 23.03.2013 (Annexure P-3) vide which the order dismissing the complaint has been upheld though liberty has been granted to the complainant/petitioner to pursue his lawful remedy for restoration of the complaint or for setting aside the acquittal of the accused. It is his contention that the instant petition was not maintainable and the only remedy available was for the petitioner to file an appeal against acquittal as in a summons case, the discharge would amount to an acquittal as has been rightly held by the Court of Additional Sessions Judge, Ludhiana.

7. The learned counsel for the respondent/accused as quite obviously, argued on similar lines contending that once the complaint had been dismissed in default, the said dismissal amounted to an acquittal and therefore, the only remedy available to the petitioner/complainant was to file an appeal against acquittal and the question of the restoration of the complaint did not arise.

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

9. Before proceeding further in the matter, it would be apposite to refer to the provisions of Section 256 Cr.P.C.

Section 256 Cr.P.C, reads ad under:-

“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.”

10. The Hon'ble Supreme Court and this Court in the judgments (supra) have held that the Magistrate has no power to review or recall its order. In a summons case, a discharge/dismissal in default would amount to an acquittal and therefore, the only remedy open to the complainant was to file an appeal against acquittal before the appropriate High Court.

CRM-M-24076-2014

11. Coming back to the facts of the present case, admittedly, when the matter was taken up on 08.05.2009, it was adjourned for 20.05.2009 for recording the statement of the accused/petitioner under Section 313 Cr.P.C. Thereafter, on account of certain reasons as have been mentioned in the application for restoration, the petitioner was unable to appear on 20.05.2009 on which date the complaint came to be dismissed in default. Subsequent thereto, an application for restoration was filed and the same came to be allowed. This restoring of the complaint would amount to reviewing an order. In fact, the remedy at that stage was clearly the filing of an appeal against acquittal before this Court.

12. In view of the aforementioned discussion, I find no infirmity in the impugned order and therefore, the present petition is ordered to be dismissed.

13. However, in view of the fact that the petitioner/complainant has been diligently pursuing the complaint and it only came to be dismissed at the stage of the recording of his statement under Section 313 Cr.P.C., the petitioner is at liberty to file an appeal before this Court and in case an appeal is filed within a period of 08 weeks from the date of receipt of copy of this order, the time spent in pursuing the present petition shall be excluded while calculating the period of limitation.

14. Disposed of.

(JASJIT SINGH BEDI)
JUDGE

14.03.2023
JITESH

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