

CRM-M-21341-2023

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2023:PHHC:166237

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21341-2023

Date of decision : 28.04.2023

Raghubir Singh

...Petitioner

Vs.

Ravinder Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Kapil Khanna, Advocate for the petitioner.

DEEPAK MANCHANDA, J.

The petitioner has filed the present petition under Section 482 Cr.P.C. for setting aside the order dated 31.8.2022 (Annexure P-3) passed by the Sub Divisional Judicial Magistrate, Balachaur, passed in Complaint No.COMI/52/2016 dated 2.12.2016 vide which the same has been dismissed in default for want of prosecution, as well as the order dated 04.02.2023 (Annexure P-5) passed by the Sessions Judge, SBS Nagar bearing Criminal Revision No.35 of 2022 dated 30.9.2022 affirming the order dated 31.8.2022, passed by the trial Court.

Learned counsel for the petitioner submits that the complainant-petitioner filed a complaint dated 2.12.2016 against the respondents under Section 420, 467, 461, 471, 191, 120-B IPC before the trial Court. He contends that the trial Court has erred in dismissing his complaint for want of prosecution as the petitioner made several requests to his counsel before the trial Court to conclude his evidence, however, the counsel failed to get him

examined. He further contends that also due to pandemic COVID-19, the case was repeatedly adjourned for various dates and finally on 31.8.2022, the date on which the complaint was dismissed in default for want of prosecution, the petitioner was not keeping good health and was suffering from dehydration and was under treatment on 30.8.2023 and advised rest for 3 days. This fact was also brought to the knowledge of the counsel for the complainant before the trial Court, telephonically and to pursue his complaint in his absence. However, later it came to the notice of the petitioner that his complaint has been dismissed in default for want of prosecution due to non-appearance of his counsel vide order dated 31.8.2022.

Against the said order of dismissal of complaint, the petitioner preferred a revision petition before the Revisional Court, however, even the said petition met the same fate vide order dated 4.2.2023, due to non-appearance.

Learned counsel for the petitioner submits that the non-appearance of the complainant was totally unintentional and on account of medical exigency, which was duly brought to the notice of his counsel, however, due to non-appearance of his counsel, in his absence, the complaint was dismissed in default. He also submits that even on 04.02.2023, the counsel did not appear, which resulted into dismissal of the revision petition and the petitioner had no role to play, therefore, he prays that the impugned orders be set aside enabling the petitioner to pursue his complaint.

A perusal of the record shows that in no way, the absence of the petitioner/complainant is to be benefitted in the complaint case nor there is anything on record to show that there was *mala fide* intention on the part of the

petitioner/complainant for his absence from the proceedings. As per the impugned orders, on both occasions there was no representation by the counsel engaged by the petitioner/complainant, which resulted into dismissal on account of absence. In the facts and circumstances of the present case, this Court is of the view that the rights of the petitioner should have been decided on merit and petitioner should not have been thrown out on the technicalities of law. Where technical consideration and merit or cause of substantial justice are pitted against each other, the cause of merit and substantial justice is to prevail.

The reasoning given by the petitioner seems to be genuine. The litigant should not be made to suffer because of the fault of the counsel and considering his medical condition at that point of time and it would in the interest of justice, if the complaint filed by the petitioner is restored to enable him to pursue with the same.

In view of the above, petition is allowed and the impugned order dated 31.8.2022 (Annexure P-3) as well as order dated 04.02.2023 (Annexure P-5) are set aside and the Complaint COMI/52/2016 dated 2.12.2016 is ordered to be restored at the stage from where it was dismissed by the trial Court. The trial Court is directed to proceed further as per law after giving notice to the parties concerned and to expedite the trial.

(DEEPAK MANCHANDA)
JUDGE

28.04.2023
Gulati/vanita

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