

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

**CRM-M-44272-2018
Date of decision : 20.07.2023**

GORJA INTERNATIONAL PVT LTD

....Petitioner

Versus

S M TEXTILE

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sukesh K. Jindal, Advocate for the petitioner.

PANKAJ JAIN, J. (ORAL)

Present petition under Section 482 is directed against order dated 27th of July, 2018 whereby the complaint under Section 138 of the Negotiable Instruments Act, 1881 preferred by the petitioner has been dismissed invoking Section 204(4) Cr.P.C. observing as under :-

“Complainant counsel moved an application seeking exemption of complainant Vishnu Bhagwan from personal appearance. Heard. Keeping in view the facts mentioned in the application, personal appearance of complainant Vishnu Bhagwan exempted for today only.

Written proclamation not published for want of publication expenses. On 21.03.2018 complainant was given three weeks time for depositing the publication expenses but needful was not done. Considerable delay has been caused due to negligent conduct of the complainant. It appears that complainant is not interested in proceeding further with the case. As such, the complaint is dismissed under section 204(4) Cr.P.C. File be consigned to records after due compliance.”

2. Counsel for the petitioner submits that it is evident from the

impugned order itself that the complainant on that day sought exemption from personal appearance which was granted and in fact default in making good the publication expenses was owing to the fact that it was never in the knowledge of the petitioner that such expenses have to be deposited by him due to non-communication thereof on account of his counsel.

3. Section 204 Cr.P.C. provides for issue of process, which reads as under :

“204. Issue of process.—(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.”

4. A bare perusal of sub-Section 4 of Section 204 Cr.P.C. reveals that the Magistrate in case of default of process fee within a reasonable time 'may' dismiss the complaint. The word 'may' is not to be read as 'shall'. Thus the Magistrate ought to have granted more time/opportunity to the complainant to deposit the expenses before taking extreme view of dismissing the complaint. In the considered opinion of this Court the Ld. Trial Court misread the provision and treated 'may' as 'shall' resulting in miscarriage of justice.

5. Coming on the merits of the case, this Court finds that the cause shown by the petitioner which led to delay in depositing the expenses is sufficient to condone the default on part of the complainant.

6. In view of above, this Court finds that the cause shown by the petitioner is sufficient to condone the default on his part. Resultantly, impugned order is set aside. Complaint is ordered to be restored to its original number and stage, subject to the condition that the petitioner shall comply with the order and deposit the publication expenses up to 20th of August, 2023.

7. The petition stands disposed off in the above terms.

July 20, 2023

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No