

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1322-2016 (O&M)**Date of Decision: 06.01.2023**

GURJIT KAUR & ANR.

... Petitioners

VS.

TAJINDER SINGH

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Ms. GK Mann, Sr.Advocate with
Ms. Simrat Kaur, Advocate for the petitioners

None for the respondent

Sandeep Moudgil, J. (Oral)

The petitioners have preferred the present revision petition assailing the order dated 08.01.2016 passed by the Additional Sessions Judge, Amritsar (for short, 'the appellate court'), vide which the complaint filed by the respondent was restored while setting aside the order dated 01.11.2014 passed by the JMIC, Amritsar (for short, 'the trial court') whereby the complaint filed by the respondent was dismissed in default for want of prosecution and the accused/respondent was ordered to be discharged.

Notice of motion in this case was issued on 04.04.2016. Thereafter, the matter has been adjourned by this Court, on innumerable occasions. Since there was no effective assistance on behalf of the respondent, this Court on 09.12.2022 directed the Registry to inform counsel for the respondent.

Today, it is reported that the counsel for the respondent has acknowledged the receipt of information, though it is informed that the respondent is not in touch despite several attempts. Accordingly, this Court proceeds to decide the case on merits.

I have heard learned senior counsel for the petitioners and have gone through the lower court record with her able assistance.

Learned senior counsel for the petitioners have drawn attention of this Court to the trial court's *zimni* order dated 01.11.2014 which reads as follows:-

*“Present: None for complainant.
Accused on bail with counsel.*

No body has turn up on behalf of complainant since calling the case since morning is now 4:00 PM. It seems that complainant is not pursuing the case properly. Hence, finding no justification for further adjournment for the same purpose. Present complaint is hereby dismissed in default for want of prosecution. The accused are ordered to be discharged. File complete in all respect be consigned to Record Room.

*Pronounced in open Court
01.11.2014*

*Sd/- (Amardeep Singh)
Judicial Magistrate 1st Class,
Amritsar”*

This Court, vide order dated 04.04.2016 had called for the trial court record to examine the *zimni* orders and to find out the justification for dismissal of the complaint for want of prosecution.

A perusal of the LCR shows that since the initiation of the complaint on 22.09.2011, even the preliminary evidence could not be concluded by complainant till the date, the same was dismissed in default for want of prosecution.

Further, instead of going through the complete record, on a bare perusal of the *zimni* orders dated 02.11.2013, 04.01.2014, 21.04.2014, 28.07.2014 and lastly of 01.11.2014, it is abundantly clear that complainant was not appearing consistently and has been seeking time on one or the other

reason without there being any justification recorded in the orders. Meaning thereby, the complainant has been casual and lackadaisical in pursuing the court proceedings in relation to the complaint filed by him.

Even otherwise, once the complaint is dismissed for want of prosecution, it amounts to acquittal of the respondent and as such, revision petition is not maintainable. The JMIC, Amritsar was not vested with the power to recall his own order and restore the complaint to its original position, until and unless, the said order is set aside by the Appellate court.

In the light of the aforesaid discussion and on perusal of lower Court record, this Court is of the considered view that the order dated 08.01.2016 passed by the Additional Sessions Judge, Amritsar, is absolutely untenable.

Accordingly, this petition is allowed and the order dated 08.01.2016 is hereby set aside.

Let the LCR be sent back.

06.01.2023

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)

Judge

- Yes/No
- Yes/No