

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

CRM-M-53409-2018  
Date of decision : 23.08.2023

Joginder Pal

.....Petitioner

Versus

Mohan Lal and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr.Sushant Kohli, Advocate for the petitioner

Mr.Krishan Sehajpal, Advocate for respondent Nos. 1 to 5

**AMAN CHAUDHARY, J.**

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for setting aside order dated 21.03.2018 passed by Judicial Magistrate, 1<sup>st</sup> Class, Jalandhar vide which the complaint of the petitioner was dismissed in default alongwith his application for exemption from personal appearance.

2. The allegations made in the complaint are that the petitioner was having a landed property in joint possession, for which the civil suit was pending. Despite that respondent Nos. 1 and 2 were trying to raise construction over the same. On 20.05.2013, he was caught by the accused and beaten up and snatched Rs.10,000/-, camera and gold ring and the sim from his mobile phone was also taken out. They abused, demeaned and humiliated him. When he raised hue and cry, his family members and other persons saved him by coming at the spot and got him admitted in the hospital.

3. Learned counsel contends that the complaint was instituted on

27.07.2013, however, the summoning order had not been passed. He was attending the proceedings by appearing himself or through his learned counsel. However, on the date when the complaint was dismissed in default vide order 21.03.2018, he had filed an application for exemption on the ground that his railway tickets could not be booked for travel to Jalandhar, he being the resident of Calcutta. Though, his counsel appeared on his behalf before the Court, but his complaint was dismissed for non-prosecution. His absence was neither intentional nor wilful. A serious prejudice would be caused to the petitioner in case he is not granted an opportunity to seek adjudication of the matter on its merits.

4. Learned counsel for the respondents submits that the trial Court has rightly dismissed the complaint, as the petitioner could not appear on the previous dates also. The petition is not maintainable as the petitioner should have filed a revision to challenge the impugned order. Thus, he prays for the dismissal of the present petition.

5. Heard the counsel for the parties.

6. The issue that arises for consideration in the present case is that whether on account of non-appearance of the complainant, at the pre-summoning stage, the complaint could have been dismissed.

7. A gainful reference can be made to a judgment in **Joga Singh vs. State of Punjab**, 2007(1) RCR (Criminal) 770, wherein, this Court set aside the order of the trial Court whereby the complaint was dismissed in default at pre-summoning stage, against which, revision was filed, which also came to be dismissed by the Additional Sessions Judge, on the ground that the same was not maintainable and the respondent-accused had taken an objection that petition under Section 482 CrPC would not be maintainable after the complainant-petitioner had already availed of his remedy of revision, as such

petition would amount to a second revision. It was observed and held thus: “It is, thus, apparent that Sections 200 to 203 of the Code, which govern procedure to be adopted, at the pre-summoning stage, do not impose any statutory duty upon a complainant to appear, in person on each date. His absence, therefore, cannot be a ground to dismiss a complaint for non-prosecution. Where, a complainant fails to appear, whether in person or through counsel, at the pre-summoning stage, the Magistrate is required to appraise the pleadings, the evidence, if any, adduced in support thereof and thereafter proceed to either dismiss the complaint, in terms of Section 203 of the Code or issue process under Section 204 of the Code. At the pre-summoning stage, Magistrate cannot dismiss a complaint for failure of the complainant to enter appearance and for want of prosecution.”

8. Further, by following the aforesaid judgment, in **Gurbachan Singh vs. Amar Singh** 2011(2) RCR (Crl.) 264, the complaint that was dismissed in default by the trial Court, was ordered to be restored.

9. Reverting to the instant case, it would be apt to refer to the application preferred by the petitioner, which reads thus:

“1. That the above said case pending before this honorable court is fixed for today and is fixed for only summoning of accused.

2. That the counsel for the complainant received a telephoning message that the complainant is not able to appear before this honorable court as the earlier date was very short and complainant is resident of Calcutta due to which railway tickets was not booked.

3. That the absence of complainant is neither willful neither intentionally. But due to above said reasons.

It is therefore prayed that kindly exempted complainant for today.” (emphasis supplied)

10. Further, the impugned order dated 21.03.2018 passed by the trial Court, reads thus:

“Today the case was fixed for consideration on summoning and for appearance of complainant as on last date of hearing

exemption was allowed only on the grounds mentioned in the exemption application. Today again application under Section 256 (1) CrPC moved by Counsel for the complainant, in which he stated that complainant can not come to the Court due to short date. But further perusal of the file reveals Complainant has not appearing in the court regularly. As such an application filed by the counsel for the complainant under section 256 CrPC is hereby declined and the present complaint filed by the complainant stands dismissed in default under section 203 CrPC. File is ordered to be consigned to the record room.”

11. The complaint was filed by the petitioner in the year 2013 and since then, he was appearing himself or through his counsel, but the summoning order had not yet been passed. The petitioner was unable to cause appearance before the trial court on 21.03.2018, for a valid reason of not being able to book the tickets from Calcutta, a place of which he was a resident. Being diligent enough, an application seeking exemption from personal appearance, was got filed by him through his counsel, but the Magistrate, however, for no good reasons, declined the same.

12. The trial Court without appreciating the fact that the complainant had been pursuing his cause indefatigably before the Court for the last decade and had also examined one witness, besides himself, in support, resorted to axing the process, by dismissing the complaint for non-prosecution, resulting in grave miscarriage of justice.

13. Regarding the submission that the petitioner should have approached the Revisional Court is concerned, it would be apposite to recapitulate the law. In **Dhariwal Tobacco vs. State of Maharashtra**, (2009) 2 SCC 370, Hon’ble The Supreme Court observed and held that, “It is, thus, difficult to conceive that the jurisdiction of the High Court would be held to be barred only because the revisional jurisdiction could also be availed of.” In **Punjab State Warehousing Corporation Faridkot vs. M/s Shri Durga Ji Traders and others** 2012 (1)

R.C.R. (Criminal) 358 while dealing with a matter wherein the High Court has dismissed the petition under Section 482 of the Code for setting aside order of dismissal of complaint in default, it was observed and held by Hon’ble The Supreme Court that, “We are convinced that in the instant case, rejection of appellants petition under Section 482 of the Code has resulted in miscarriage of justice. Availability of an alternative remedy of filing an appeal is not an absolute bar in entertaining a petition under Section 482 of the Code. As aforesaid, one of the circumstances envisaged in the said Section, for exercise of jurisdiction by the High Court is to secure the ends of justice. Undoubtedly, the trial court had dismissed the complaint on a technical ground and therefore, interests of justice required the High Court to exercise its jurisdiction to set aside such an order so that the trial court could proceed with the trial on merits.”

14. In the aforesaid premises, this Court is of the view that it is a fit case for invocation of the power vested in it by virtue of Section 482 of CrPC to secure ends of justice. The impugned order dated 21.03.2018 is set aside. The trial Court is, therefore, ordered to restore the case to its original number and to decide it on its merits, in accordance with law expeditiously, considering that the case has been pending since the year 2013.

15. The present petition is allowed, accordingly.

23.08.2023  
gsv

(AMAN CHAUDHARY)  
JUDGE

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