

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

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CRM-M-13043-2022 (O&M)
Date of decision: 20.09.2023

Rajender Singh

...Petitioner

Versus

Surender

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Arun Singal, Advocate for the petitioner

Mr. Ajit Singh, Advocate for

Mr. Arun Sharma, Advocate for the respondent

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 482 CrPC for quashing the impugned order dated 08.09.2021, Annexure P-3 passed by Additional Sessions Judge, Panipat dismissing the revision, challenging the order dated 17.10.2016, vide which the complaint was dismissed in default due to non-appearance of the petitioner.

2. The brief facts of the case are that the complainant-petitioner had advanced a friendly loan of Rs.3,00,000/- to the respondent, with whom he had close relations, for domestic use, in the month of March 2013. In order to discharge his legal liability, the respondent issued a cheque bearing no.004237 dated 07.06.2013, which when presented, returned unpaid vide memo dated 08.06.2013 with remarks “insufficient funds”. Thereafter, a legal notice was sent to the respondent, which he refused to receive. Thus, the petitioner had filed a complaint under Section 138 NI Act.

3. Learned counsel would contend that the revisional Court without going into the merits of the case, mechanically dismissed the petition, on a technical ground of delay in its filing. As a matter of fact, the complainant-petitioner had applied for obtaining a certified copy of order of dismissal on 21.12.2016, which was prepared only on 03.01.2017, thus, the time taken in the aforesaid was required to be excluded, considering the same, the revision was well within the period of limitation. He had good case on merits, as the trial Court had wrongly dismissed his complaint in default on account of non-appearance of the petitioner as also his counsel, which was due to inadvertence, the date of hearing having been wrongly noted as 17.12.2016 instead of 17.10.2016. It is only when the file could also not be traced on the said date, it transpired on enquiry by the clerk of the learned counsel that the case had as a matter of fact been dismissed in default on 17.10.2016. However, the case had reached a stage of cross-examination of the complainant, after he had submitted his affidavit on 17.10.2015.

4. Learned counsel for the accused-respondent would oppose the instant petition by submitting that the petitioner should have been vigilant in prosecuting the complaint and the revision, which were both rightly dismissed.

5. Heard learned counsel on either side.

6. A profitable reference can be made to the judgment in **Municipal Corpn. of Delhi vs. Girdharilal Sapru**, (1981) 2 SCC 758, wherein Hon'ble The Supreme Court observed and held that, "It, however, appears that the respondents contended that the revision petition was barred by limitation. Even this contention is founded on a very technical ground that even though the revision petition was

filed very much in time the requisite power of attorney of the learned Advocate on behalf of the petitioner was not legally complete and when it was re-submitted the limitation had expired. Without going into the nicety of this too technical contention, we may notice that Section 397 of the Code of Criminal Procedure enables the High Court to exercise power of revision suo motu and when the attention of the High Court was drawn to a clear illegality the High Court could not have rejected the petition as time barred thereby perpetuating the illegality and miscarriage of justice. The question whether a discharge order is interlocutory or otherwise need not detain us because it is settled by a decision of this Court that the discharge order terminates the proceeding and, therefore it is revisable under Section 397(1), CrPC and Section 397(1) in terms confers power of suo motu revision on the High Court, and if the High Court exercises suo motu revision power the same cannot be denied on the ground that there is some limitation prescribed for the exercise of the power because none such is prescribed. If in such a situation the suo motu power is not exercised what a glaring illegality goes unnoticed can be demonstrably established by this case itself. We, however, do not propose to say a single word on the merits of the cause because there should not be even a whimper of prejudice to the accused who in view of this judgment would have to face the trial before the learned Magistrate.”

7. In **Ram Naresh Prasad vs. State of Jharkhand**, 2014 SCC OnLine Jhar 703, it was observed while setting aside the order of the Sessions Court that dismissal of revision on delay was too technical a ground.

8. Coming to the facts of the case at hand, the complainant-petitioner initially in the year 2016 when his complaint instituted in 2013, was at the stage of

his cross-examination, got ousted due his non-appearance, as also that of his learned counsel, they both having noted down the wrong date. The revision that was preferred, was dismissed on the ground that a delay of 65 days had occurred in filing it, though there appears to be none, when the time taken for the preparation of the certified copy of order is excluded therefrom.

9. Bearing in mind that the wide powers possessed by the High Courts under Section 482 CrPC should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the Courts exist, as had been held by Hon’ble The Supreme Court in **Amit Kapoor vs. Ramesh Chander**, (2012) 9 SCC 460 and recently reiterated in **Supriya Jain vs. State of Haryana**, (2023) 7 SCC 711, this Court is of the considered view that given the facts of the present case, it was but of course imperative for the Revisional Court to have adjudicated the matter on merits instead of axing it on the ground of delay alone. As a consequence thereof, the present petition deserves to be and is allowed thereby setting aside the impugned order dated 08.09.2021 and remitting the case to the Court of learned Additional Sessions Judge, for it to be decided on merits, in accordance with law.

(AMAN CHAUDHARY)
JUDGE

September 20, 2023
ashok

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No