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

CRM-M-41718-2023

Date of decision: 23.08.2023

Avtar Singh (since deceased) through LRs  
versus

....Petitioner(s)

Krishan Lal

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** Mr. Pankaj Attri, Advocate for the petitioner(s).

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**ARUN MONGA, J. (ORAL)**

Petition herein is under Section 482 Cr.P.C. for setting aside order dated 11.07.2023 (Annexure P-6) passed by learned Judicial Magistrate First Class, Hoshiarpur, whereby complaint No. NACT 35 of 17.01.2022 (Annexure P-1) titled as '*Avtar Singh Vs. Krishan Lal*' for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 instituted by petitioner against respondent-accused, was dismissed for non-prosecution.

2. Succinct facts first, as pleaded in the petition;

2.1 Original petitioner Avtar Singh had lodged a complaint dated 17.01.2022 (Annexure P-1) against dishonor of cheque No. 022660 dated 17.11.2021 amounting to Rs.1,62,000/- issued by accused-respondent in lieu of discharge of legally enforceable liability towards petitioner. Respondent was summoned as accused in the complaint vide summoning order dated 07.03.2022 (Annexure P-2). During the pendency of the present complaint, complainant/petitioner (now represented by legal representatives) expired on 25.06.2023.

2.2 Vide the impugned order dated 11.07.2023 (Annexure P-6), when none appeared on behalf of the petitioner/complainant, the complaint was dismissed in default. The impugned order is bad in law and liable to be quashed since learned Court below should have granted opportunity to legal representatives of petitioner in case they wish to prosecute the complaint.

3. Learned counsel for petitioners submits that original petitioner/complainant was regularly appearing before the learned trial Court but on 11.07.2023, since petitioner had expired on 25.06.2023 and his legal representatives were not aware of the pending proceedings before learned Court below, the complaint was dismissed in default vide impugned order dated 11.07.2023 (Annexure P-6).
4. Given the nature of order being passed, there is no necessity to issue notice to respondent at this stage and notice is thus dispensed with.
5. I have heard learned counsel for the petitioner and have perused the case file carefully.
6. Instead of dismissing the complaint in default on death of complainant, learned Court below should have granted an opportunity to legal representatives of petitioner to prosecute the complaint. It transpires from the record that the impugned order was passed in the absence of the complainant and learned Court below should have adjourned the case granting opportunity to the legal representatives and awaiting for appearance of legal representatives of petitioner to determine as to whether they wish to prosecute the complaint.
7. In the premise, instant petition is allowed and impugned order dated 11.07.2023 (Annexure P-6) is set aside. Complaint is revived to its original number and stage. LRs of complainant (petitioners herein) are directed to appear before learned Court below on 14.09.2023 for further proceedings.
8. Needless to say, the proceedings before learned Court below to commence/continue in accordance with law.
9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)  
JUDGE

23.08.2023  
Harish Kumar

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No