

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

120

CRM-M-45336-2023

Date of Decision : November 14, 2023

SUKHWINDER SINGH AND ANR

-Petitioners

V/S

STATE OF PUNJAB AND ANR

-Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Shoryaveer Vashist, Advocate
for the petitioners.

Mr. Karunesh Kaushal, A.A.G, Punjab.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition, as instituted under Section 482 of the Cr.P.C., the petitioners yearn for quashing of the orders dated 12.04.2023 (Annexure P-4) and 05.07.2023 (Annexure P-5), as passed respectively by the learned Judicial Magistrate Ist Class, Balachaur and by the learned Sessions Judge, S.B.S. Nagar.

2. At the very outset, the learned counsel for the petitioner submits that the learned Magistrate concerned, through an order made on 12.04.2023 (Annexure P-4), after recalling her earlier order dated 31.03.2023, whereby, the complaint bearing CIS No.COMI/53/2016 was ordered to be dismissed in default for want of prosecution, allowed restoration of the complaint (supra) to its original number. However, once the complaint (supra) was dismissed for non-prosecution, the learned Magistrate concerned became *functus officio* and had no authority to recall her earlier order. To fortify his above made submission, he has

placed reliance upon a judgment rendered by this Court in case titled ***“Krishan Lal V/s Sangeeta Aggarwal”***, *Crl. Misc. No.M-79076 of 2006*, Decided on: 06.05.2009, wherein, it has been held that the Code of Criminal Procedure does not endow any statutory authority in the learned Magistrate concerned to review/recall her own order, except if it suffers from any clerical or arithmetical error. To further strengthen his above made submission, he has also placed reliance upon a judgment rendered by the Hon’ble Supreme Court in ***“Major General A.S. Gauraya V/s S.N. Thakur”***, *Criminal Appeal No.184 of 1979*, Decided on : 25.04.1986.

3. With the able assistance of the learned counsel for the petitioner, I have made a thorough survey of the orders (supra), as impugned before this Court.

4. It is indisputable that a Magistrate does not have any able statutory authority or jurisdiction to recall his/her own order, therefore, the impugned order (Annexure P-4), as passed by the learned Magistrate concerned, is *per se* illegal. However, the learned revisional court concerned took cognizance of this fact and drew the order dated 05.07.2023 (Annexure P-5), thereby declaring the order (Annexure P-4) to be *non est*. Moreover, through order (Annexure P-5), the learned revisional Court concerned, after summoning the relevant record from the court of learned Magistrate concerned and finding the order dated 31.03.2023, whereby, the complaint (supra) was ordered to be dismissed in default for want of prosecution, to be replete with manifest error of law, observed that once the charges had been framed, there was no statutory jurisdiction vested in the learned Magistrate concerned to dismiss the

complaint (supra) merely for non-prosecution, especially when it was a warrant case. Consequently, with the above observations, the learned revisional Court concerned, rectified the error committed by the learned Magistrate concerned and also set aside the order dated 31.03.2023, whereby, complaint (supra) was dismissed for non-prosecution.

5. As a consequence of hereinabove discussed material, this Court does not find any apparent error or perversity in the order dated 05.07.2023 (Annexure P-5), as passed by the learned revisional Court concerned. Therefore, the instant petition is dismissed being devoid of merits and the impugned order (Annexure P-5) is affirmed and maintained.

November 14, 2023
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No