

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-36872-2019 in/and
CRM-A-2728-2019
now treated as CRA-AS-422-2023
Date of Decision: 12.09.2023

Swaraj Singh

. . . . Appellant

Vs.

Ishwar Singh

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Anshuman Dalal, Advocate, for the applicant/appellant.

DEEPAK GUPTA, J.

CRM-36872-2019 in/and
CRM-A-2728-2019

Applicant is aggrieved by the order dated 02.04.2019 passed by Id. JMIC, Rohtak, whereby complaint titled 'Swaraj Singh Vs. Ishwar Singh' (CNR No. HRRH03-002297-2019) was dismissed in default for want of prosecution.

2. Ld. counsel contends that complaint could not have been dismissed in default having the effect of acquittal within the meaning of Section 256 Cr.P.C. because by that time, even the preliminary evidence had not been recorded. Ld. counsel has drawn attention towards Section 256 Cr.P.C. so as to contend that said provision becomes applicable only if summons have been issued on the complaint and on the date appointed for the appearance of the accused or any date subsequent thereto, the complainant does not appear.

3. Appeal is also accompanied by an application to condone the delay of 112 days in filing the present appeal.

4. It is submitted by ld. counsel that complaint was dismissed for want of prosecution on 02.04.2019 due to wrong noting of the date by the complainant as well as his counsel, as they had noted the date to be 04.04.2019. It is on 04.04.2019 that on coming to know about the dismissal of the complaint, that they moved an application for restoration of the complaint, but the same was dismissed by the ld. JMIC on 04.07.2019. It is because of this misconception of law that delay of 112 days occurred in filing this appeal.

5. Considering the fact that summons had not been issued to the respondent-accused by the time complaint was dismissed for want of prosecution, no notice of motion of this appeal is considered necessary to be sent to the respondent and as such, the same is dispensed with.

6. Considering the grounds as mentioned in the application, delay of 112 days in filing the appeal is hereby condoned.

7. CRM-36872-2019 stands disposed of.

8. Leave to appeal is hereby granted.

9. Registry is directed to assign number to the appeal.

CRA-AS-422-2023.

10. The paper-book reveals that complaint was as filed on 15.02.2019 and the same was adjourned to 16.02.2019 and then for 02.04.2019 for recording preliminary evidence of the complainant.

11. However, on the adjourned date i.e., on 02.04.2019, as nobody made appearance for the complainant–appellant, the same was dismissed in default. It is, thus, clear that on the date when the complaint was dismissed for want of prosecution, by that time neither any preliminary evidence was

recorded nor any order had been passed so as to summon the accused/
respondent.

12. Section 256 Cr.P.C. reads as under: -

***256. Non-appearance or death of complainant.** — (1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:*

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may, dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

13. The bare perusal of the aforesaid provision would reveal that it is only when summon has been issued on a complaint and on the date appointed for the appearance of the accused or any date subsequent thereto to which hearing may be adjourned, the complainant does not appear, that the Magistrate can acquit the accused. However, it is not mandatory for the Magistrate to do so because if for some reasons, he thinks it proper to adjourn the hearing of the case, he may do so. Magistrate may also adjourn the matter, when the complainant is represented by the pleader or Magistrate is of the opinion that personal attendance of the complainant was not necessary and, in that eventuality, Magistrate may dispense with his attendance and proceed with the case.

14. In the present case, complainant-appellant was represented by an advocate. Instead of dismissing the complaint in default on the very first date of appearance, it was required for the Magistrate to have served notice upon the complainant or his pleader. The dismissal of the complaint cannot have effect of acquittal of the accused-respondent.

15. Consequently, the impugned order dated 02.04.2019, dismissing the complaint in default, is hereby set aside. Ld. trial Court is directed to restore the complaint at its original number and proceed further in accordance with law.

16. Appellant-complainant is directed to appear before the trial Court concerned on or before 09.10.2023.

Allowed.

(DEEPAK GUPTA)
JUDGE

12.09.2023

Vivek

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |