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

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CRM-M-55586-2018
Date of decision : 18.07.2023

Parveen Kumar

..... Petitioner

versus

Deepak Giri

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Raghav Sharma, Advocate
for the petitioner.

Mr. Nitin Kadian, Advocate for
Mr. Yashveer Kharb, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

Present petition has been filed under Section 482 directed against the order dated 19.11.2018 passed by JMIC, Panipat, whereby complaint case No.694/18 titled as “Parveen Kumar vs. Deepak Giri” initiated at the behest of the petitioner-complainant has been dismissed for non-prosecution.

2. Counsel for the respondent has taken a preliminary objection w.r.t. the maintainability of the present petition under Section 482 Cr.P.C. submitting that the petitioner ought to have resorted to appeal under Section 378(4) Cr.P.C. instead of filing present petition under Section 482 Cr.P.C.

3. Faced with the situation, counsel for the petitioner submits that on his request, present petition be treated as appeal.

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4. Since nomenclature of the petitioner cannot be a reason to deny the relief, request made by counsel for the petitioner is accepted. The present petition is ordered to be treated as appeal. Registry is directed to number the same.

5. While affording reason for non-appearance on the day the impugned order was passed, it has been asserted by the complainant-petitioner as under:-

“xx xx xx

That the complainant-petitioner had entered the witness box on the previous dates and got recorded the statement and tendered all the documentary evidence regarding the allegations as levelled in the complaint. However, on 19.11.2018 the petitioner had forgotten the date fixed for the case, owing to which he could not appear for the cross examination inadvertently.

Further the counsel of the petitioner Sh, Sandeep Jaglan, District Court Panipat was also busy in personal family function because of which he could not put in the appearance in the case. The copy of wedding card is attached alongwith as Annexure P-3 for the kind perusal of this Hon’ble Court.”

6. The reason for non-appearance of the counsel representing the complainant-petitioner has also been explained sufficiently. The law w.r.t. dismissal of the complaints owing to non-appearance of the complainant has been well explained by the Apex Court in case of **S. Rama Krishna vs. S. Rami Reddy (D) By His Lrs. & Ors., 2008(5) SCC 535**, wherein while explaining the import of Section 256 of the Code, Apex Court held as under:-

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“xx xx xx

10. The provisions of Section 256(1) mandate the Magistrate to acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case. If an exceptional course is to be adopted, it must be spelt out the discretion conferred upon the learned Magistrate, however, must be exercised with great care and caution. The conduct of the complainant for the said purpose is of immense significance. He cannot allow a case to remain pending for an indefinite period.”

7. Thus, jurisdiction under Section 256 of the Code to dismiss the complaint on account of default on part of complainant has to be a consequence of finding by the Trial Court that the complainant is guilty of causing inordinate delay in trial that effects the right of the accused to speedy trial. Complaint should not be dismissed under Section 256 of the Code just for a single default. Reference to that effect can be made to *Mohd. Azeem A. Venkatesh and another* reported as (2002) 7 SCC 726.

8. Keeping in view the fact that the single absence of the petitioner as well his counsel has been sufficiently explained, this Court finds that it will be in the interest of the parties that the matter is adjudicated on merits. Resultantly, impugned order is set aside. Parties are directed to appear before the trial Court on 09.08.2023.

9. The trial Court shall proceed from the stage the matter was dismissed for non-prosecution.

10. Disposed off accordingly.

(PANKAJ JAIN)
JUDGE

18.07.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No