

CRM-M-64625-2023
Date of decision: 21.12.2023

Versus

Rajroop and others ... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vivek Sheoran, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 read with Section 483 of Cr.P.C. seeking quashing of order dated 16.01.2023 (Annexure P-5) vide which the learned trial Court has wrongly dismissed the complaint bearing No.25 of 2019 for want of prosecution and for consequent restoration of the said complaint and for granting the petitioner one last opportunity. The petitioner has also prayed for setting aside the order dated 31.03.2023 (Annexure P-7) vide which the lower Court has dismissed the restoration application filed by the petitioner.

Learned counsel for the petitioner *inter alia* contends that the statutory scheme provided under the Code of Criminal Procedure does not require the petitioner to appear on each and every date at pre summoning stage and his absence, therefore, cannot be a ground for dismissing the complaint for non-prosecution. He further relies upon the judgment of this Court passed in

***'Joga Singh Vs. State of Punjab and others'* (2007) 1 RCR (Criminal) 770.**

Having heard learned counsel for the petitioner and after perusal of the record, this Court finds force in the arguments advanced by learned counsel for the petitioner. Chapter XIV of Cr.P.C. provides for procedure to be adopted on a receipt of the complaint. Section 200 of Cr.P.C. provides for taking cognizance of a complaint, the complainant and his witnesses are to be examined. Section 203 of Cr.P.C. empowers the Magistrate to dismiss the complaint if after considering the statement on oath or upon inquiry made under Section 202 of Cr.P.C., he finds there is no sufficient ground for proceeding further. The statutory scheme contained in Chapter XIV, however, does not contain any provision which require complainant to be personally present before a Court on each and every date of hearing. As such before issuance of process under Section 204 of Cr.P.C. the complaint cannot be dismissed in default for non-prosecution due to the non-appearance of the complainant. A similar controversy has been dealt by this Court in the judgment passed in **‘Kuldip Singh Vs. Harnam Singh and another’ 1982 (9) The Criminal Law Times 289**. After a perusal of the statutory provisions of the Code, it was held as follows:-

‘From a plain reading of this provision, it is clear that the Magistrate can dismiss the complaint if he, after considering the result of the enquiry of investigation, if any, is of the opinion that there is no sufficient ground for proceeding. This is the only provision of law which deals with the dismissal of complaints. However, Sections 249 and 256 of the Code deal with different situations. Section 249 relates to the cases where the offence is compoundable and non-cognizable and the Magistrate is empowered thereunder to discharge the accused if the complainant is absent. Section 256 comes into play after the

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process is issued against the accused and the accused is present in Court and it deals with the non-appearance or the death of the complainant. Thus, these two sections come into play after the accused has been summoned and appears in Court. In the present case admittedly, the accused have not yet been summoned and the complaint was dismissed by the trial Court for the absence of the complainant.'

In view of the submissions made by learned counsel for the petitioner and the ratio of law laid down in ***Joga Singh (supra) and Kuldip Singh (supra)***, the present petition is allowed in limine and impugned orders dated 16.01.2023 and 31.03.2023 (Annexure P-5 and Annexure P-7, respectively) are set aside subject to payment of Rs.5,000/- as costs to be deposited with the District Legal Services Authority, Panipat, within one month, without issuing notice to the respondents as they were yet to be summoned and no prejudice would be caused to them and to save their litigation costs.

Learned trial Court is directed to proceed from the stage the case was dismissed in default for non-prosecution and decide the same in accordance with law.

(HARPREET SINGH BRAR)
JUDGE

21.12.2023

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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No