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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52129-2019

Date of Decision: January 25, 2023

Dr.Tejinder Pal Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Ravi Chadda, Advocate
for the petitioner.
Mr.P.S.Grewal, DAG, Punjab.

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RAJESH BHARDWAJ, J.(ORAL)

Instant petition has been filed under Section 482 Cr.P.C. praying for quashing of order dated 06.06.2019, Annexure P-2, passed by learned Judicial Magistrate Ist Class, Ludhiana, wherein the complaint filed by the petitioner under Section 138 of Negotiable Instruments Act (for brevity, 'the Act') titled as '**Tejinder Pal Singh vs Baljinder Singh**' has been dismissed for want of prosecution.

It has been submitted by counsel for the petitioner that petitioner was cheated by respondent No.2 for sale consideration. The petitioner had entered into an agreement with respondent No.2 and paid him Rs.35.00 lakhs. However, before the sale-deed could be executed, respondent No.2, in connivance with one Baldev Singh, sold the land to him and thus, cheated the petitioner for an amount of Rs.35.00 lakhs. The petitioner resisted the same and in order to restrain the petitioner from seeking his legal remedies, respondent No.2 issued two cheques to him amounting to Rs.16.00 lakhs each for refund of the amount paid by the petitioner, however on presentation of both the cheques before the Bank,

both were dishonoured. Petitioner issued a legal notice to respondent No.2 for payment of said amount, however, respondent No.2 failed to pay the same and thus, the petitioner was left with no remedy than to file a complaint under Section 138 of the Act. He submits that petitioner was regularly appearing before the trial Court with his counsel, however, on one date, i.e. 06.06.2019, he requested his counsel to file an application for granting him exemption from his appearance, however, unfortunately, neither his counsel could appear nor application for exemption was filed. Resultantly, the learned trial Court dismissed the complaint filed by the petitioner for want of prosecution by passing the impugned order dated 06.06.2019. He submits that absence of the petitioner and his counsel was totally unintentional and the petitioner cannot be penalised for *bona fide* mistake. He has submitted that the complaint filed by the petitioner has not been decided on merits and thus, interest of the petitioner has been seriously prejudiced. He submits that to meet the ends of justice, the complaint be restored to its original number and trial Court be directed to decide the complaint filed by the petitioner on merits. He submits that petitioner would not delay the trial unnecessarily and would abide by the orders passed by this Court and the trial Court.

Heard.

This Court vide order dated 06.12.2019 issued notice of motion, after hearing counsel for the petitioner. As per report filed by the Registry would show that both the respondents, i.e. respondent No.1/State and respondent No.2/accused, were served for 07.02.2020 and 21.05.2020 respectively. However, despite that there is no representation on behalf of respondent No.2. From the facts and circumstances of the case, it is evident

that the petitioner had filed a complaint in the year 2013 and the same was dismissed for non-prosecution in the year 2019. This Court does not find any justification in adjourning the matter further for presence of respondent No.2. The case in hand has been dismissed by the trial Court for non-prosecution. Deciding this petition in the absence of respondent No.2 would not prejudice the interest of respondent No.2. However, the Court cannot ignore the fact that both, i.e. the petitioner and his counsel remained absent on 06.06.2019. The impugned order would reflect that the case was called several times and finally at 4.00 p.m., the case was dismissed for non-prosecution.

Keeping in view the facts and circumstances of the present case, this Court is of the opinion that the complaint filed by the petitioner should be restored to its original number and status, to be decided on merits.

Accordingly, petition is allowed. Order dated 06.06.2019 is set aside subject to payment of costs of Rs.25,000/ to be deposited by the petitioner in Poor Patients' Welfare Fund, PGIMER, Chandigarh within a period of seven days from today. In case the petitioner makes payment of costs as directed and produce the receipt before the trial Court, the trial Court would restore the complaint filed by the petitioner to its original number and proceed with the trial, after issuing notice to respondent No.2/complainant, and decide the same as per law expeditiously preferably within a period of six months from the date of its restoration.

January 25, 2023
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(RAJESH BHARDWAJ)
JUDGE

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