

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-AS-525-2023 (O & M)
Date of decision: 14.11.2023

Mohinder Pal Appellant

V/s

Jagtar Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDIPresent: Mr. Yogesh Gupta, Advocate, for the appellant.
*******JASJIT SINGH BEDI, J. (Oral)**

A complaint bearing case No.81 dated 07.08.2013 titled as 'Mohinder Pal versus Jagtar Singh' came to be dismissed in default for want of prosecution by the court of Additional Chief Judicial Magistrate, Sangrur vide order dated 10.04.2015 against which the instant appeal has been filed. The impugned order reads as under:-

"Notice issued to the complainant and his counsel received back duly executed. Case called several times throughout the day but nobody has appeared on behalf of the complainant. It is already 3.10 pm. Waited sufficiently. It seems that the complainant is not interested to proceed further with the present complaint. As such, the present complaint is hereby stands dismissed in default for want of prosecution. The accused is hereby discharged from the offences leveled against him. The file is accordingly consigned to the record room".

2. The learned counsel for the applicant-appellant submits that the summoning order was passed on 30.10.2013 but the respondent-accused did not appear before the Court and was declared a proclaimed person on 06.10.2014. Thereafter, he moved an application for surrender on 12.01.2015, a fact unknown to the applicant-appellant. The case was

adjourned to 23.01.2015 for consideration on notice of accusation upon the accused. On the adjourned date i.e. 23.01.2015 and the subsequent date i.e. 09.02.2015, neither the applicant-appellant nor his counsel had appeared in the Court but their presence was wrongly recorded in the orders of the said dates. It was only on 09.03.2015 that notice was issued to the applicant/appellant/complainant and his counsel for 10.04.2015. On the said date, on account of misplacing of the notice, the applicant/appellant/complainant could not appear leading to the passing of the impugned order. The case was pending for consideration on notice of accusation on the accused-respondent and the presence of the applicant/appellant/complainant could very well have been dispensed with. Even otherwise, there was nothing on record to establish that the applicant-appellant/complainant was adopting dilatory tactics to the detriment of the accused-respondent. Quite to the contrary, it was the accused-respondent who had been declared a proclaimed person and had surrendered only later. He, therefore, contends that the impugned order be set aside and the complaint be restored to its original number for adjudication on merits.

3. As the case is based on judicial orders passed by the Trial Court, I do not deem it necessary to issue notice to the accused-respondent.

4. I have heard the learned counsel for the applicant-appellant/complainant and perused the paper-book with his assistance.

5. Apparently, the complaint was instituted on 07.08.2013 and the summoning order was passed on 30.10.2013. The respondent-accused was declared a proclaimed person on 06.10.2014. He surrendered on 12.01.2015, after which the case stood adjourned for consideration on notice of accusation upon the accused-respondent. Without going into the

alongwith his counsel or not on 23.01.2015 and 09.02.2015, suffice it to say that there is nothing on record to establish that the applicant-appellant/complainant was, in any manner, adopting dilatory tactics to the detriment of the accused-respondent. In fact, it was the accused-respondent who was evading service and had been declared a proclaimed person. Even on the date on which the impugned order was passed, the presence of the applicant-appellant/complainant was not necessary as the notice of accusation could very well have been served upon the respondent-accused. Therefore, in my opinion, the impugned order is unduly harsh and oppressive and has, therefore, resulted in miscarriage of justice as the absence of the applicant/appellant/complainant on 10.04.2015 seems to be *bona fide* and unintentional. In fact, the applicant/appellant/complainant did not stand to benefit in any manner by not appearing on the date fixed.

6. In view of the above, the present appeal is allowed and the impugned order dated 10.04.2015 is set aside. The Trial Court is directed to restore the complaint to its original number and proceed further in accordance with law. The parties are directed to appear before the Trial Court on 30.11.2023 for further proceedings.

(JASJIT SINGH BEDI)
JUDGE

November 14, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No