

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

CRM-M-13164-2018 (O&M)
Date of decision: 06.09.2023

Kuldeep Singh

...Petitioner

Versus

UT Chandigarh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Pankaj Maini, Advocate for the petitioner

Mr.Anil K.Lamdharia, Addl.PP, UT, Chandigarh

AMAN CHAUDHARY, J.

1. Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure is for setting aside the cancellation report filed by respondent No.2 on 06.02.2014, in FIR No.399 dated 19.10.2013, registered under Section 420 of the Indian Penal Code at Police Station Sector-11, Chandigarh.

2. The facts in brief are that an agreement to sell with regard to the land measuring 3 kanals situated in village Khuda Ali Sher was executed between the petitioner and respondent No.4, and the last date for execution of the sale deed was fixed for 31.12.2003. An amount of Rs.30,000/- as cash and cheques of Rs.1 lac each on 16.06.2004 and 24.06.2004 were handed over to the said respondent, against which the receipts were issued to the petitioner. However, the said respondents did not come forward to execute the sale deed. FIR in question was registered. After investigation, the police filed a cancellation report, to which the complainant-petitioner filed a protest petition. However, the said cancellation report was accepted by the

Magistrate and it was ordered that the protest petition be treated as complaint, which was dismissed in default, for want prosecution vide order dated 09.06.2017.

3. Learned counsel contends that the complainant-petitioner was cheated by the private respondents. He has restricted his prayer to the setting aside of the order whereby the trial Court wrongly dismissed in default his protest petition, which was ordered to be treated as a complaint. A serious prejudice would be caused to the petitioner in case he is not granted an opportunity to seek adjudication of the matter on its merits, especially when he did not get justice before the police.

4. Learned counsel for the respondents submits that the trial Court has rightly dismissed the complaint, as the petitioner did not appear on the date fixed. The petition is not maintainable as the petitioner should have filed a revision to challenge the impugned order. Thus, he prays for the dismissal of the present petition.

5. Heard the learned counsel for the parties.

6. A gainful reference can be made to a judgment in **Punjab State Warehousing Corpn. vs. Shree Durga Ji Traders**, (2011) 14 SCC 615, while dealing with a matter wherein the High Court has dismissed the petition under Section 482 of the Code for setting aside order of dismissal of complaint in default, it was observed and held by Hon'ble The Supreme Court that, "We are convinced that in the instant case, rejection of appellants petition under Section 482 of the Code has resulted in miscarriage of justice. Availability of an alternative remedy of filing an appeal is not an absolute bar in entertaining a petition under Section 482 of the Code. As aforesaid, one of the circumstances envisaged in the said Section, for exercise of

jurisdiction by the High Court is to secure the ends of justice. Undoubtedly, the trial court had dismissed the complaint on a technical ground and therefore, interests of justice required the High Court to exercise its jurisdiction to set aside such an order so that the trial court could proceed with the trial on merits.”

7. Further, by following the aforesaid judgment, in **Gurbachan Singh vs. Amar Singh**, 2011 SCC OnLine P&H 1178, the complaint that was dismissed in default by the trial Court, was ordered to be restored. In **Joga Singh vs. State of Punjab**, 2006 SCC OnLine P&H 1320, this Court set aside the order of the trial Court observing that Magistrate cannot dismiss a complaint for failure of the complainant to enter appearance and for want of prosecution.

8. Reverting to the instant case, it would be apt to refer to the order dated 11.05.2015 which reads thus:

“Today the case was fixed for consideration on protest petition. After hearing ld. counsel for the complainant, this court is of the considered view that this is not a fit case for sending this matter for further investigation, neither there is any material on which cognizance can be taken by this court. All the points alleged by the complainant in his protest petition have already been investigated by the police and there remains to be nothing on which further investigation can be ordered. Besides this, from the perusal of the file, this appears to be civil transaction for which the jurisdiction of the criminal court cannot be invoked. This case pertains to agreement to sell and subsequent non fulfillment of that agreement in entirety. This cancellation report is accepted. However, in the interest of justice, this protest petition is treated as complaint. I order accordingly. Now to come up on 8.6.2015 for preliminary evidence of the complainant.”

9. Further, the impugned order dated 09.06.2017, passed by the trial Court, reads thus:

“Today the case has been fixed for service of the complainant. Summons issued to the complainant received back served, however, none has appeared on behalf of complainant to contest the case. Case called several times since morning at different intervals but neither the complainant nor anybody on his behalf has turned up. Waited sufficiently since morning. It is already 3.55 PM. Further wait is not justified. As such present complaint stands dismissed in default for want of prosecution. File be consigned to the record room after due compliance.”

10. The FIR was registered by the petitioner on 19.10.2013, and the cancellation report was submitted on 06.02.2014, which was accepted vide order dated 11.05.2015, whereby his protest petition was ordered to be treated as complaint, which however, came to be dismissed for non-prosecution vide the order aforesaid. At times, a party can be prevented by sufficient reasons to put an appearance before the Court and such an absence cannot necessarily be construed as deliberate and wilful. The petitioner, being the complainant would have gained nothing by absenting himself from the proceedings.

11. The trial Court without appreciating the fact that the complainant had been pursuing his cause indefatigably for almost a decade now resorted to axing the process, by dismissing the complaint for non-prosecution, resulting in grave miscarriage of justice.

12. In **Dhariwal Tobacco vs. State of Maharashtra**, (2009) 2 SCC 370, Hon’ble The Supreme Court observed and held that, “It is, thus, difficult to conceive that the jurisdiction of the High Court would be held to be barred only because the revisional jurisdiction could also be availed of.”

13. In the aforesaid premises, this Court is of the view that it is a fit case for invocation of the power vested in it by virtue of Section 482 of CrPC to secure ends of justice. The impugned order dated 09.06.2017 is set

aside. The trial Court is, therefore, ordered to restore the case to its original number and to decide it on its merits, in accordance with law expeditiously, considering that the case has been pending since the year 2013.

- 14. The present petition is hereby allowed.
- 15. Pending applications, if any, be disposed of accordingly.

06.09.2023
ashok/gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No