

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

**CRM-M-55298-2019
Decided on : 10.08.2023**

Inderjit Singh

... Petitioner

Versus

Charan Kamal

... Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

PRESENT: Mr. Dinesh Nagar, Advocate
for the petitioner

Mr. Tushar Madaan, Advocate
for the respondent

AMAN CHAUDHARY, J.

1. The present petition under Section 482 of the Code of Criminal Procedure has been filed for setting aside order dated 11.10.2019, passed by Judicial Magistrate, 1st Class, Hoshiarpur, vide which complaint bearing No.COMA/6865/2013 dated 26.03.2013 of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act'), against the respondent was ordered to be dismissed in default for want of prosecution.

2. Learned counsel for the petitioner submits that the complaint was filed on 26.03.2013, with regard to dishonour of cheque, amounting to Rs.60,000/-, wherein the summoning order was passed vide an order of even date. The accused-respondent did not appear and was finally declared proclaimed person on 31.08.2015. Thereafter, he had appeared and was granted bail on 03.10.2019. The case was adjourned to 11.10.2019 for evidence, on which date, the petitioner could not appear on account of ill health, a fact that he had informed his counsel, however, he also could not appear. The non-appearance of the petitioner was neither intentional nor willful. He did not have anything to gain by

not appearing or delaying the proceedings, which as a matter of fact, had already been pending since 2013.

3. On the other hand, learned counsel for the respondent submits that present petition is not maintainable for restoration of the complaint, which was dismissed in default, as it amounts to acquittal of the accused-respondent, thus, appeal under Section 378(4) CrPC should have been filed.

4. Heard.

5. As is discernible from the complaint that the accused-respondent issued a cheque amounting to Rs.60,000/- in favour of the compliant-petitioner, to discharge his legal debt, which on presentation got dishonoured, due to 'insufficient funds'. A complaint under Section 138 NI Act was filed by the petitioner, wherein summoning was passed, however, on account of non-appearance of the accused-respondent, he was declared proclaimed person in the year 2015, but due to absence of the complainant-petitioner as well as his counsel, the said complaint came to be dismissed in default for want of prosecution vide order dated 11.10.2019.

6. It is apposite to make a reference to Section 256 CrPC, which reads thus:

“256. Non- appearance or death of complainant.

(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day: Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub- section (1) shall, so far as may be, apply also to cases where the non- appearance of the complainant is due to his death.”

7. As is evident from the provision of Section 256 CrPC, it comes into play only after issuance of summons to an accused but at the post-summoning stage. Manifestly the aforesaid provision provides plentitude power to the Magistrate in the matter of dismissal of a complaint for non-prosecution, to proceed with the case, despite the absence of the complainant, in the eventuality he comes to a conclusion that the attendance of the complainant, who if represented through by a pleader or by officer conducting the prosecution was not necessary on that particular day, or adjourn the same, of course on some plausible grounds, however, while exercising his discretion, in case he decides to dismiss the same in default for want of prosecution at such a juncture, the upshot of which would be acquittal of the accused.

8. In **V.K. Bhat vs. G.Ravi Kishore and another** 2016(2) RCR (Criminal) 793, Hon'ble The Supreme Court considering the question as to whether in a case where the complaint was dismissed, the same tantamounts to acquittal and in such a situation whether a revision under Section 397(3) CrPC or appeal under Section 378(4) CrPC would lie, held that, "After hearing the learned counsel for the parties, we find that there is some force in the submissions made by learned counsel appearing for the appellant and we hold, in the facts of the case, that dismissal of the complaint for non-prosecution of the complainant amounts to acquittal as contemplated in section 256 of the Code of Criminal Procedure, 1973."

9. There is a clear distinction drawn as regards the dismissal of complaints for non-prosecution prior to the order of summoning and thereafter. As a natural corollary of operation of Section 256 CrPC to challenge an order dismissing a complaint post the issuance of summoning order, only appeal against acquittal would be maintainable.

10. Applying the aforesaid provision of law and the judgments to the facts of the present case, this Court finds that the present petition is not maintainable and as such, the same is dismissed. However, reserving the petitioner a liberty to pursue the remedy, in accordance with law.

(AMAN CHAUDHARY)
JUDGE

10.08.2023
Mehak

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