

2024:PHHC:161738



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

255

CRM-A-55-2024 (O&M)
Date of Decision: 03.12.2024

Krishan Lal deceased through his Lr Tarun ...Appellant
Versus
State of Haryana and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Rajesh Duhan, Advocate
for the applicant.

Mr. Rajinder Kumar Banku, DAG, Haryana.

Mr. Navdeep Singh, Advocate, for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

CRM 3075 of 2024

1. The applicant has moved the present application with a prayer to condone the delay of 493 days in filing the present application for grant of leave to appeal.
2. I have heard learned counsel for the parties and perused the record.
3. For the reasons mentioned in the application, the same is allowed and the delay of 493 days in filing the present application for grant of leave to appeal is ordered to be condoned.

CRM-A-55-2024

1. The applicant, who is legal representative of Krishan Lal has filed the present application for grant of leave to appeal against the impugned order dated 07.07.2022 passed by the Court of Judicial Magistrate 1st Class, Panipat, whereby, the complaint filed by his father Krishan Lal (original complainant) was ordered to be dismissed for want of prosecution and the respondent was acquitted.

2. Learned counsel for the applicant has vehemently argued that the father of applicant, namely, Krishan Lal had filed a complaint under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') against respondent No. 2/accused in the Court of Judicial Magistrate 1st Class, Panipat. After taking into consideration the preliminary evidence, respondent No.2/accused was summoned to face trial by the trial Court. During trial, Krishan Lal, father of the applicant/original complainant had expired on 29.03.2021 leaving behind the present applicant as his legal representative. After the death of the complainant, the case was listed before the trial Court on 10.05.2021. However, due to Covid 19 Pandemic, the case was adjourned to 21.01.2022. Again on 21.01.2022, both the counsel made a request to adjourn the case for 13.05.2022. On 13.05.2022, no one appeared on behalf of the complainant and the case was adjourned to 07.07.2022. Again on 07.07.2022, there was no representation on behalf of the complainant

and vide the impugned order, the case was dismissed for want of prosecution.

3. In fact, when the applicant came to know about the pendency of the complaint, he had gone to the Court on 07.07.2022 and moved an application on the same day for restoration of the complaint after lunch and copy of the said application was appended with the present application as annexure A-3. Even, another application was filed for bringing on record the legal representative of the complainant and to permit him to proceed the complaint further. A reply was filed to the restoration application and vide order dated 23.12.2022 (Annexure A-6), the said application was ordered to be dismissed. Challenging the order dated 07.07.2022, the applicant has preferred the present application for leave to appeal before this Court.

4. Learned counsel for the applicant has vehemently argued that the complaint was dismissed for want of prosecution on 07.07.2022 and on the same day, the application was moved by the applicant/son of the complainant for restoration of the complaint. However, the said application was wrongly dismissed. He further contends that the trial Court had wrongly dismissed the complaint for the want of prosecution.

5. On the other hand, learned counsel for the respondent has vehemently argued that the applicant had not appeared before the trial Court intentionally and the application for leave to appeal is liable to be dismissed.

6. I have heard the learned counsel for the parties at length and with their able assistance perused the case file carefully.

7. While dealing with the similar controversy, this Court in **CRA-2169-SBA of 2005 titled as ‘Aman Kumar Versus Vijay Kumar’** has observed as under:-

“9. Section 256 of Criminal Procedure Code is extracted below:-

*“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, of 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.”

10. The aforesaid provision of law clearly lays down that the Magistrate has discretion to dismiss the complaint if on any date fixed for hearing of the complaint, the complainant fails to appear in the Court. However, if the Magistrate finds that there was some valid reason for

non appearance of the complainant or the presence of the complainant was not required during the Court proceeding, he can very well exercise his discretion to adjourn the complaint. While exercising the jurisdiction under Section 256 Cr.P.C., the Court has to take into consideration that the powers vested in it have to be exercised judiciously and in the interest of justice.

11. Keeping in view the aforesaid principles of law and advertng to the facts of the instant case, it is the case of the appellant that only on one date, he could not appear during the Court proceedings due to wrong noting of the date of hearing by him and as a consequence thereof, the complaint was ordered to be dismissed in default. The record clearly establishes that the case was repeatedly taken up and effective proceedings were held before the learned trial Court. On each and every date, the complainant had appeared with his counsel and the plea taken by the appellant/complainant appears to be genuine as he would not have intentionally allowed the complaint to be dismissed in default as he had to recover the amount of cheque from the respondent as well. Even the bona fides of the appellant are evident from the fact that on earlier occasions, he had been regularly appearing and only on one date, he could not appear due to wrong noting of the date of hearing. Consequently, it was inappropriate for the learned trial Court to dismiss the complaint in default, especially when the case was listed for appearance of the accused before the learned trial Court and the appearance of the appellant was not so essential on the said date.

8. The view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court rendered in **'The Associated Cement Company Ltd. Versus Keshvanand', 1998(1) RCR (Crl.) 309**, wherein it has been held as under:-

"14. Section 256 of the Code of Criminal Procedure, 1973 (for short 'the new Code') is the corresponding provision to Section 247 of the old Code. The main body of both provisions is identically worded, but there is a slight difference between the provisos under the two sections. The proviso to Section 256 of the new Code is reproduced here: "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."

15. What was the purpose of including a provision like Section 247 in the old Code (or Section 256 in the new Code). It affords some deterrence against dilatory tactics on the part of a complainant who set the law in motion through his complaint. An accused who is per force to attend the court on all posting days can be put to much harassment by a complainant if he does not turn up to the court on occasions when his presence is necessary. The section, therefore, affords a protection to an accused against such tactics of the complainant. But that does not mean if the complainant is absent, court has a duty to acquit the accused in invitum.

16. Reading the section in its entirety would reveal that two constraints are imposed on the court for exercising

the power under the section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the Magistrate shall not acquit the accused. Second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day the Magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice.”

9. In the present case also, the original complainant Krishan Lal had expired when the applicant came to know about the pendency of the complaint, he immediately moved an application for permitting the LR of Krishan Lal to pursue the complaint and to restore the complaint. However, the said application was also dismissed.

10. In fact, the law is well settled that a criminal complaint should not be dismissed in a hurry. It is always desirable that a *lis*

should be decided on merits, rather the non suiting the parties at technical grounds.

11. In view of the above discussion and the law laid down by this Court as well as by the Hon’ble Supreme Court of India in the cases referred above, the impugned order dated 07.07.2022 passed by the Court of Judicial Magistrate 1st Class, Panipat is set aside and the complaint is restored to its original number.

12. The trial Court is also directed to proceed with the complaint from the stage, when it was dismissed for want of prosecution.

13. Since, the complaint is pending since long, the trial Court is directed to conclude the trial expeditiously, preferably within a period of 01 year from today.

14. The Registry of the Court is directed to inform the trial Court in this regard.

15. The present petition stands disposed off, accordingly.

03.12.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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