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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3325-2022

Date of Decision: 19.04.2024

Poonam Rani

...Petitioner

VS.

Kirandeep Kaur

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat**Present :** Mr. Akhil Ahuja, Advocate
for the petitioner.Ms. Puja Chopra, Advocate
for the respondent.

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to set aside the impugned order dated 20.11.2019 (Annexure P-5), passed by the Court of Judicial Magistrate 1st Class, Bathinda, whereby the complaint filed by the petitioner/complainant was dismissed for want of prosecution under Section 256 Cr.P.C. and the respondent was acquitted from the notice of accusation as served upon him.

2. Learned counsel for the petitioner submits that the respondent had borrowed a sum of Rs.2.50 lakhs from the petitioner and executed a pro-note and receipt in favour of the petitioner. However, the respondent had also issued a cheque bearing No.931824 dated 15.09.2017 for a sum of Rs.2.50 lakhs drawn on State Bank of India from her account No.55144336880 and discharged her liability and took back the pro-note and receipt. On presentation with his banker, the said cheque was dishonoured with the remarks "funds

insufficient” and the petitioner filed a complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the Act) before the Court at Bathinda on 27.11.2017.

3. Vide order dated 28.11.2017, the respondent was summoned by the trial Court. Ultimately, the notice of accusation was served on the respondent on 22.05.2018. Learned counsel for the petitioner contends that the husband of the petitioner was an employee of State Bank of India and on 12.04.2018, he was transferred from Chandigarh to Singapore for a foreign posting of 03 years. As a result, the petitioner was burdened with the responsibilities of entire family as her husband had shifted to Singapore. She had instructed her counsel to call her in the trial Court, as and when her personal appearance was required. However, her counsel assured that he was taking care of her case and she would be called. In February, 2019, the petitioner wanted to go to Singapore to meet her husband and also informed her counsel in this regard. The petitioner also returned to India for a short Diwali Vacations along with her husband between 19.10.2019 to 28.10.2019. Again, learned counsel appearing before the trial Court informed her that he was pursuing the matter and he would inform the petitioner in case her personal presence was required. Later on, she requested to her relatives in India to inquire about the status of the case and came to know about the impugned order dated 20.11.2019 (Annexure P-5), whereby the complaint has already been dismissed for want of prosecution. Even the petitioner wanted to return to India, but she could not return due to outbreak of Covid-19 Pandemic and she immediately filed a petition before this Court, after returning to India.

4. Learned counsel for the petitioner also relied upon the law laid down by the Hon’ble Supreme Court in the matter of “*Punjab State*

Warehousing Corporation, Faridkot vs Shree Durga Ji Traders and others”, **2011(14) SCC 615**, wherein the Hon'ble Supreme Court has held that if there is miscarriage of justice, the availability of alternative remedy is not a bar to exercise the inherent power of the High Court under Section 482 Cr.P.C. The operative part of the judgment reads as under:-

“11. Bearing in mind the afore-stated legal position in regard to the scope and width of the power of the High Court under Section 482 of the Code, we are of the opinion that the impugned decision is clearly indefensible. As noted above, the High Court has rejected the petition under Section 482 of the Code on the ground of availability of an alternative remedy without considering the seriousness of the nature of the offences and the fact that the Trial Court had dismissed the complaint on a hyper technical ground viz. since the complainant had been appearing in person, despite order dated 16th April 1999, exempting him from personal appearance, the said exemption order became redundant and the complainant should have sought a fresh exemption from personal appearance. We feel that such a view defies any logic. An order of exemption from personal appearance continues to be in force till it is revoked or recalled.

12. We are convinced that in the instant case, rejection of appellant's 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.

13. Resultantly, the appeal is allowed. The impugned judgment as also the orders of the Chief Judicial Magistrate dated 18th February 2003 and 9th November 2005 are set aside and the complaint filed by the appellant is restored to the file of the Chief Judicial Magistrate. The Chief Judicial Magistrate shall now proceed with the trial after securing the presence of the accused.”

5. On the other hand, learned counsel appearing on behalf of the respondent submits that after the complaint was dismissed in default, the respondent was acquitted of the notice of accusation and the complainant had right to file an appeal under Section 378(4) Cr.P.C. Thus, the present petition is not maintainable before this Court.

6. In the present case, from the pleadings of the parties, it is apparent that the husband of the present petitioner had been transferred to Singapore by State Bank of India on a foreign posting for a period of three years. In February 2019, she also shifted with her husband to Singapore and only came to India for a short duration on Diwali in the year 2019. Thereafter, due to Covid-19 Pandemic, the petitioner could not visit India and in the meantime, the case was dismissed for non-prosecution, due to non-appearance of the petitioner under Section 256 Cr.P.C. In the present case, the petitioner has been able to show a bona fide ground for non-appearance before the trial Court and the order of the trial Court dismissing the case for non-prosecution seems to be a harsh decision. In fact, instead of dismissing the case in a hurry, the Court should have issued a notice to the counsel for the complainant/petitioner and the trial Court has wrongly observed that the complainant did not intend to pursue the complaint. Rather, it was apparent from the record that the petitioner was earlier appearing before the trial Court.

7. Still further, I find no force in the submissions made by learned counsel for the respondent that at this stage, the petitioner should be relegated to the remedy of filing of an appeal before this Court against the impugned order. In fact, in the light of the ratio laid down by the Hon’ble Supreme Court in the matter of **Punjab State Warehousing Corporation, Faridkot (supra)**, it would be appropriate to exercise *suo moto* inherent power under Section 482 Cr.P.C. to restore the complaint because at this stage. Issuing a direction or granting permission to the complainant to file an appeal under Section 378(4) Cr.P.C. along with an application under Section 14 of the Limitation Act will be harsh, considering the fact that more than 2 years have lapsed after filing of the present petition before this Court.
8. Consequently, it is held that the petitioner/complainant has been able to show the bonafide ground for her non-appearance and the complaint is liable to be restored to its original position for being decided on merits.
9. In view of the above discussion, the present petition is allowed and the impugned order dated 20.11.2019 (Annexure P-5) is set aside and the complaint dated 27.11.2017 (Annexure P-2) is ordered to be restored before the trial Court.
10. The parties through their respective counsel are directed to appear before the trial Court on or before 06.05.2024.

19.04.2024.
hemlata

(N.S.SHEKHAWAT)
JUDGE

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