

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-7154-2021
Date of Decision: 15.04.2024

BHAG SINGH

... Petitioner

Versus

STATE OF PUNJAB & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. G.S. Sandhu, Advocate
for the petitioner.

Mr. Mohit Saroha, Asstt. A.G., Punjab.

Mr. Sikandh Mehta, Advocate for
Mr. Shail Khunger, Advocate
for respondent No.5.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 16.01.2020 (Annexure P-2) passed by the JMIC, Ludhiana in Criminal Complaint No.COMI-522-2019 titled as Bhag Singh Versus Rajiv Kumar Etc. vide which the complaint filed by the petitioner has been dismissed in default.

2. The brief facts of the case are that the petitioner filed a Criminal Complaint under Sections 406/420/34 IPC against respondent Nos.2 to 5 before the Court of JMIC, Ludhiana for cheating him of an amount of Rs.15,80,000/-. The copy of the complaint dated 11.07.2019 is attached as Annexure P-1 to the petitioner.

3. The complaint was entrusted to the Court of JMIC, Ludhiana on 15.07.2019 and the next fixed was 09.09.2019 for the preliminary evidence

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of the complainant. As the petitioner did not appear before the concerned Court, the case was dismissed in default on 16.01.2020. The copy of the order dated 16.01.2020 is attached as Annexure P-2 to the present petition.

4. It is this order which is under challenge in the present petition.

5. The learned counsel for the petitioner contends that on account of the lack of diligence on the part of the counsel representing the petitioner in the Trial, the petitioner was unable to appear on the concerned date because of which the impugned order came to be passed. In fact, the counsel had repeatedly informed the petitioner/complainant that on account of the Covid-19 pandemic the cases were not being heard. It was only later that the petitioner came to know on visiting the Courts that his case had been dismissed in default way back in January, 2020. He contends that if the impugned order was not set aside the petitioner would suffer irreparable loss. Reliance is placed on the judgment in the case of **Punjab State Warehousing Corporation Faridkot Versus M/s Sh. Durga Ji Traders and others, 2012(1) R.C.R. (Criminal) 358** to contend that even though there was an alternative remedy by way of filing of an appeal against acquittal, the instant petition under Section 482 Cr.P.C. was maintainable.

6. Despite service none has put in appearance on behalf of respondent Nos.2 to 4.

7. The proxy counsel for respondent No.5 had sought time to argue the matter. However, as the order I intend to pass is based on record and the judgments of the Hon'ble Supreme Court the matter does not require to be adjourned particularly when respondent No.5 has sought adjournments on earlier occasions as well.

8. I have heard the learned counsel for the petitioner and gone through the record.

9. Before proceeding further in the matter, it would be apposite to refer to the judgment of the Hon'ble Supreme Court in the case of **Punjab State Warehousing Corporation Faridkot** (supra) and the same is reproduced hereinebelow:-

9. 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. 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.

(emphasis supplied)

10. Coming back to the facts of the instant case, apparently, the petitioner/complainant was unable to appear on 16.01.2020 because of which the complaint came to be dismissed in default. It is the categorical averment of the petitioner that he did not appear on account of the fact that his counsel before the Trial Court had not apprised him of the date and thereafter, the Covid-19 pandemic shut down the entire judicial system. Further, merely because an alternative remedy of filing of an appeal against acquittal is available would not bar a petition under Section 482 Cr.P.C.

11. In view of the above, the present petition is allowed. The impugned order dated 16.01.2020 (Annexure P-2) passed by the JMJC, Ludhiana in Criminal Complaint No.COMI-522-2019 is set aside and the complaint is ordered to be restored to its original number and the Trial Court is directed to proceed with the Trial as per law.

(JASJIT SINGH BEDI)
JUDGE

15.04.2024

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No