

2024:PHHC:096966



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

247

CRA AS-30-2023
Date of Decision: 22.07.2024

Dharambir Singh		...Appellant
	Versus	
Surender Kumar Jain		... Respondent

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

Present : Mr. Nipun Vashist, Advocate, for the appellant.

Ms. Nandita Aggarwal, Advocate for
Mr. Sumeet Jain, Advocate, for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The appellant has filed the present appeal against the impugned order dated 15.11.2021 passed by the Court of Judicial Magistrate 1st Class, Gurugram, in a complaint case bearing CIS No. 4241 of 2017 titled as “**Dharambir Singh Vs. Surender Kumar Jain**” whereby, the complaint filed by the present appellant was ordered to be dismissed for want of prosecution.
2. Learned counsel for the appellant submits that the present appellant had filed a criminal complaint under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the**

Act') against respondent on 18.07.2017, on account of dishonour of a cheque bearing No. 285235 dated 07.12.2016 for a sum of Rs. 3,00,000/- drawn on HDFC Bank, Gurugram. After filing of the complaint, the preliminary evidence was led by the appellant and vide order dated 20.07.2017, the trial Court summoned the respondent as an accused. Since, the respondent was not appearing before the trial Court, he was ordered to be declared as proclaimed offender on 12.03.2019. Later, on 15.11.2021, the case was again put up before the trial Court and on the same day, vide the impugned order, the complaint was ordered to be dismissed in default for the want of prosecution. Learned counsel for the appellant has also placed reliance on the case details (Annexure A-3), which clearly shows that after 12.03.2019, the case was taken up all of a sudden on 15.11.2021 and on the same day, itself, it was ordered to be dismissed in default for the want of prosecution. Learned counsel submits that the case has been dismissed in a hurry by the trial Court and the impugned order is legally unsustainable.

3. On the other hand, learned counsel for the respondent has vehemently opposed the prayer made by the learned counsel for the appellant.

4. I have heard learned counsel for the parties and perused the record.

5. From the record, it is apparent that the appellant had been regularly appearing before the trial Court, however, only on one date,

i.e., 15.11.2021, the appellant/complainant could not appear before the Court as after 12.03.2019, the case was taken up all of a sudden on 15.11.2021 and on the same day, itself, it was ordered to be dismissed in default for the want of prosecution.

6. 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.”

7. 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 nonappearance 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. In the present case, the appellant could not appear on one date i.e. on 15.11.2021 and the case was dismissed in default by the Trial Court in a hurry.

8. In view of the above discussion, the instant appeal is allowed and impugned order dated 15.11.2021 passed by the Court of Judicial Magistrate 1st Class, Gurugram, is ordered to be set-aside.

9. Since, the complaint in the present case was filed on 18.07.2017, the trial Court is directed to conclude the trial on merits expeditiously, preferably within a period of eight months from today.

10. The parties are expected to cooperate with the trial Court for the expeditious disposal of the case.

11. Pending applications, if any, are also disposed off, accordingly.

22.07.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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