

132 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9906-2024
Date of decision: 26.02.2024

Harpreet Singh

Versus

Harpreet Singh

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.N Pillania, Advocate
for the petitioner.

HARPREET SINGH BRAR, J.

1. The petitioner has approached this Court by filing present petition under Section 482 of the Code of Criminal Procedure seeking quashing of the impugned order dated 04.10.2023 (Annexure P-4) passed by the learned Additional Civil Judge (Sr. Division)-cum-Sub Divisional Judicial Magistrate, Ratia in complaint No. NACT/270/2019 filed under Section 138 of the Negotiable Instruments Act, 1881 vide which the aforesaid complaint filed by the petitioner has been dismissed for want of prosecution.

2. Allegedly, the respondent had borrowed an amount of Rs.4,50,000/- from the petitioner qua which he issued a security cheque in favour of the petitioner. The said cheque bearing No.047303 dated 27.07.2019 was dishonoured twice due to insufficient balance in the account of the respondent. Thereupon, a legal notice was sent to the respondent calling upon him to pay the cheque amount, but to no avail. The petitioner, aggrieved by the

same, filed the complaint (supra) against the respondent. But the learned trial Court dismissed the complaint (supra) filed by the petitioner for want of prosecution vide the impugned order dated 04.10.2023 (Annexure P-4). Aggrieved, the petitioner has approached this Court by way of the present petition.

3. The learned counsel for the petitioner *inter alia* contends that the non-appearance on the part of the petitioner was completely unintentional as the concerned date of hearing was wrongly noted by the clerk of the counsel representing him before the learned trial Court. He further submits that as per the settled law, the petitioner cannot be made to suffer for the unintentional mistake of his concerned counsel.

4. Learned counsel for the petitioner further submits that since the case before the learned trial Court was still at the stage of summoning of the respondent-accused, the said dismissal leads to irreparable loss to the petitioner, whereas, the restoration of the said complaint would cause no prejudice to the respondent.

5. Having heard the learned counsel for the petitioner and after perusing the record with his able assistance, this Court is of the opinion that the learned trial Court has adopted a very strict attitude resulting in irreparable loss to the petitioner. As the complaint (supra) was still at a nascent stage and the respondent-accused had still not put in his appearance before the learned trial Court, no prejudice shall be caused to the respondent in case the present petition is allowed. Further, the petitioner cannot be made to suffer on account of an unintentional mistake on the part of his counsel.

6. Before proceeding further, it is pertinent to discuss the statutory provisions provided under the Code of Criminal procedure relevant to the case at hand. Chapter XIV of Cr.P.C. provides for procedure to be adopted on a receipt of the complaint. Section 200 of Cr.P.C. provides for taking cognizance of a complaint, the complainant and his witnesses are to be examined. Section 203 of Cr.P.C. empowers the Magistrate to dismiss the complaint if after considering the statement on oath or upon inquiry made under Section 202 of Cr.P.C., he finds there is no sufficient ground for proceeding further. The statutory scheme contained in Chapter XIV, however, does not contain any provision which require complainant to be personally present before a Court on each and every date of hearing. As such before issuance of process under Section 204 of Cr.P.C. the complaint cannot be dismissed in default for non-prosecution due to the non-appearance of the complainant. A similar controversy has been dealt by this Court in the judgment passed in **Joga Singh Vs. State of Punjab and others'** (2007) 1 RCR (Criminal) 770, wherein, it was held as follows:-

8. Where, however, summons are to be issued, the trial is to proceed under Chapter XX titled as "Trial of summons cases by Magistrates". Section 256 thereof, prescribes the consequences for the non-appearance or death of a complainant. Section 256 Criminal Procedure Code, however, does not apply to the procedure prescribed at the pre-summoning stage.

9. It is, thus, apparent that Sections 200 to 203 of the Code, which govern procedure to be adopted, at the pre-summoning stage, do not impose any statutory duty upon a complainant to appear, in person on each date. His absence, therefore, cannot be a ground to dismiss a complaint for non-prosecution. Where, a complainant fails to appear, whether in person or through counsel, at the pre-summoning stage, the Magistrate is required to appraise the pleadings, the evidence, if any, adduced in support thereof and thereafter proceed to either dismiss the complaint, in terms of Section 203 of the Code or issue process under Section 204 of the Code. At the pre-

summoning stage, Magistrate cannot dismiss a complaint for failure of the complainant to enter appearance and for want of prosecution.

*10. A controversy, similar to the one in the present case, whether a complainant is required to be personally present on each and every date of hearing, was subject matter of **Kuldip Singh v. Harnam Singh and another, 1982(9) The Criminal Law Times 289**. After a perusal of the statutory provisions of the Code, it was held as follows:*

"From a plain reading of this provision, it is clear that the Magistrate can dismiss the complaint if he, after considering the preliminary evidence of the complainant and his witnesses, and the result of the enquiry of investigation, if any, is of the opinion that there is no sufficient ground for proceeding. This is the only provision of law which deals with the dismissal of complaints. However, Sections 249 and 256 of the Code deal with different situations. Section 249 relates to the cases where the offence is compoundable and non-cognizable and the Magistrate is empowered thereunder to discharge the accused if the complainant is absent. Section 256 comes into play after the process is issued against the accused and the accused is present in Court and it deals with the non-appearance or the death of the complainant. Thus, these two sections come into play after the accused has been summoned and appears in Court. In the present case admittedly, the accused have not yet been summoned and the complaint was dismissed by the trial Court for the absence of the complainant."

7. In view of the above discussion, the present petition is allowed, subject to payment of Rs.5,000/- to DLSA, Fatehabad, within one month.

8. Subsequently, the above-mentioned impugned order dated 04.10.2023 (Annexure P-4) is set aside and the complaint (supra) is ordered to be restored to its original number at the same stage where it was dismissed. Learned trial Court is directed to proceed further as per law after giving notice to the parties concerned.

9. The present petition has been disposed of, at this stage, without issuing any notice to the respondent-accused to save the litigation cost and to prevent delay of the proceedings.

10. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

26.02.2024
Neha

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