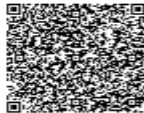


2024:PHHC:099660



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

243

CRM-A-345 of 2023 (O&M)
Date of Decision: 01.08.2024

Symphorian		...Appellant
	Versus	
Rimpy		... Respondent

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

Present : Mr. Kanwar Inder Singh, Advocate, for the appellant.

N.S.SHEKHAWAT, J. (Oral)

1. The present appeal has been preferred against the impugned order dated 17.08.2022 passed by the Court of Judicial Magistrate First Class, Jalandhar, whereby, the complaint under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') filed by the present appellant/complainant was ordered to be dismissed for non-prosecution and the respondent had been acquitted.

2. Learned counsel for the appellant submits that the present appellant had filed a criminal complaint (Annexure A-1) against the respondent. After filing of the complaint, the appellant was appearing before the trial Court on each and every date of hearing. The case was

listed before the trial Court on 30.07.2022 and the appellant had wrongly noted the date of hearing as 17.11.2022. However, the correct date was 17.08.2022, when the case was ordered to be dismissed for non-prosecution and the respondent was ordered to be acquitted. Learned counsel for the appellant submits that only on one date, he could not appear before the trial Court due to the bonafide mistake and the trial Court had wrongly dismissed the complaint for non-prosecution.

3. Learned counsel for the appellant has relied upon the law laid down in the matter of **“Shakti Industrial Corporation Vs. Ridaus Auto Components Private Limited and other”, 2015(8) RCR (Criminal) 457; “Santosh Devi Vs. Mahinder Singh”, 2015(2) R.C.R. (Criminal) 192 and “The Associated Cement Co. Ltd. Vs. Keshvanand”, 1998 (1) RCR (Criminal) 309.**

4. In the present case, despite service, no one had appeared to assist the Court on behalf of the respondent.

5. I have heard learned counsel for the appellant and perused the record.

6. From the record, it is apparent that the appellant had been regularly appearing before the trial Court, however, only on one date, i.e., 17.08.2022, the appellant/complainant could not appear before the Court and the case was ordered to be dismissed for non-prosecution.

7. 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.”

8. 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.

9. Keeping in view the aforesaid principles of law and advertent 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. 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.

10. In ***“The Associated Cement Co. Ltd. Vs. Keshvanand”***, ***1998 (1) RCR (Criminal) 309***, the Hon'ble Supreme Court of India has 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.”

11. Even this Court has held in the matter of ***Shakti Industrial Corporation’s case (Supra)*** and ***Santosh Devi’s case (Supra)***, ***Manoj Kumar Kinha Vs. Dinesh Kumar and another; 2021(3) RCR (Criminal) 133***, and ***the Associated Cement Co. Ltd.’s case (Supra)*** that the dismissal of the complaint for non-prosecution is not justified in similar circumstances as it is always desirable that a lis should be decided on merits, rather than, non-suiting the parties on technical grounds. In the present case, the appellant could not appear on one date i.e. on 17.08.2022 and the case was dismissed for want of prosecution by the trial Court in a hurry.

12. In view of the above discussion, the instant appeal is allowed and impugned order dated 17.08.2022 passed by the Court of

Judicial Magistrate 1st Class, Jalandhar, is ordered to be set-aside and the complaint is restored.

13. Since, it is an old case, the trial Court is directed to decide the main case on merits expeditiously.

14. The parties are expected to cooperate with the trial court for the expeditious disposal of the case.

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

01.08.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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