

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-548-2023
Decided On: 20.05.2024

PRAMOD SAHNIEAPPELLANT(s)

Versus
BHUPINDER DHIRRESPONDENT(s)

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rahul Rana, Advocate for Mr. V. K. Gupta, Advocate
for appellant.

PANKAJ JAIN, J.(Oral)

1 Present appeal has been filed assailing the impugned order dated 24.02.2023 passed by Judicial Magistrate 1st Class, Kharar whereby the complaint preferred by the petitioner was dismissed in default for non-prosecution.

2 Learned counsel for the appellant submits that the trial Court erred invoking the provisions as contended under Section Section 256 of the Code of Criminal Procedure to dismiss the complaint for non prosecution as the complaint was fixed for presence of the accused and the same was ordered to be effected through non bailable warrants in order to demonstrate same, reliance upon the order dated 01.11.2022 as well as the pleadings raised in para 8 of the memo of appeal, which reads as under:-

*“Present Sh. Vikas Gupta, Advocate for the complainant.
Non-bailable warrants issued against accused received back unexecuted.
Let fresh non bailable warrants against accused be issued for 08.12.2022.
Date of Order 01.11.2022 Sd/- (Manzra Dutta), JMIC.
Para 8. That from 08.12.2022 matter was adjourned to 31.01.2023 for fresh non-bailable warrants. Appellant noted next date as 14.03.2023. That as per order dated 31.01.2023 nor the counsel appeared nor the appellant and case was adjourned to 24.02.2023. The purpose is not*



mentioned nor the status of non-bailable warrants are ever mentioned served or not.”

3. After going through the records of the case, this Court finds that law with respect to invoking provisions of Section 256 of the stand settled by Apex Court in the case of ***Associated Cement Company Limited vs Keshvanand* 1998 (1) SCC 687** which was followed in ***S. Anand vs Vasumathi Chandrasekar* 2008 (4) SCC 67**, once the complainant had already been examined as a witness in the case, it would not be appropriate for the Court to dismiss the complaint merely on non-appearance of the complainant. These two judgments have further been followed in ***M/s BLS Infrastructure Limited Vs. M/s Rajwant Singh & ors. 2023 (4) SCC 326***, the relevant part of which is as under :-

“11. In the case of S. Anand (supra), addressing a situation where the complainant was absent but had already examined his witnesses, this Court observed as follows:

"12. Section 256 of the Code provides for disposal of a complaint in default. It entails in acquittal. But, the question which arises for consideration is as to whether the said provision could have been resorted to in the facts of the case as the witnesses on behalf of the complainant have already been examined.

13. The date was fixed for examining the defence witnesses. The appellant could have examined witnesses, if he wanted to do the same. In that case, the appearance of the complainant was not necessary. It was for her to cross-examine the witnesses examined on behalf of the defence."

After observing as above, in paragraph 15, it was held thus:

"15. ... when the prosecution has closed its case and the accused has been examined under section 311 of the Code of Criminal Procedure, 1973 the Court was required to pass a judgment on merit of the matter."

12. In Associated Cement Co. Ltd. (supra), the purpose of inserting a provision like Section 256 of the Code was discussed and in light thereof, in paragraph 16, it was observed as under:



"16. 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 protection to an accused against such tactics of the complainant. But that does not mean if the complainant is absent, the court has a duty to acquit the accused in invitum."

After observing as above, it was held that where the complainant had already been examined as a witness in the case, it would not be appropriate for the Court to pass an order of acquittal merely on non-appearance of the complainant. Thus, the order of acquittal was set-aside and it was directed that the prosecution would proceed from the stage where it reached before the order of acquittal was passed."

3 Thus, the test to invoke Section 256 of the Code is whether the proceedings were such for which the presence of the complainant was necessary. In the considered opinion of this Court, the trial Court failed to make itself alive of the situation that the matter was indeed fixed for appearance of the accused and, thus, was not justified in dismissing the complaint on mere non-appearance of the complainant.

4 Consequently, the impugned order dated 24.02.2023 is set aside. Complaint is ordered to be restored to its original number.

5 Parties are directed to appear before the Trial Court on 08.07.2024.

6 Petition stands disposed off.

20.05.2024
Aman Dua

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No