

2024:PHHC:072988



(277) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.38734 of 2019 (O&M)

Date of Decision: 16.05.2024

KULDIP SINGH

.....Petitioner(s)

Vs

LOVEPREET SINGH

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rohit Kumar, Advocate for the petitioner.

None for the respondent.

HARKESH MANUJA, J. (Oral)

[1]. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of order dated 11.01.2019 passed by learned Judicial Magistrate Ist Class, Phul, District Bathinda whereby the complaint filed at the instance of the petitioner/complainant, was dismissed for non-prosecution on account of his non-appearance.

[2]. The brief facts of the case are that a criminal complaint came to be instituted at the instance of Kuldip Singh (petitioner/complainant) against Lovepreet Singh under Sections 304, 279, 337, 338, 427, 420 of IPC (Annexure P-1) and the learned trial Court, vide impugned order dated 11.01.2019, dismissed the said complaint on account of non-appearance of the petitioner. For reference, the order dated 11.01.2019 is reproduced as under:-

*“Present: None.**Today complaint called several times, but the complainant has come present. As such, the file be put up after lunch for awaiting of appearance of complainant.**Date of order: 11.01.2019**Mandeep Singh Kaith*

JMIC/Phul/UID No.PB0491

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CNR No.PBBTB1-000503-2017

Present: None.

File again taken up after lunch, again complainant has not come present. Perusal of file shows that the complainant has not appeared in the present complaint for the last two dates and he do not bother to proceed with the present complaint nor he produced any evidence even the notice to complainant served, but none appeared on his behalf. Complaint called several times, since morning, but neither the complainant has come present nor any one has appeared on his behalf. It is already 4.00 PM. As such, the present complaint stands dismissed in default. File be consigned to the record room.

Date of order: 11.01.2019

*Mandeep Singh Kaith
JMIC/Phul/UID No.PB0491”*

[3]. Impugning the aforesaid order, learned counsel for the petitioner submits that on most of the occasions, petitioner appeared before the trial Court. On 13.11.2018, statement of petitioner was recorded and the case was adjourned to 03.12.2018. However, on account of noting down wrong date of hearing by the counsel representing the petitioner as 03.02.2019, he could not appear on the date fixed, resulting into dismissal of complaint for non-prosecution. He further submits that non-appearance of the petitioner was wholly unintentional as the petitioner never intended to evade the process of law and the same was for *bona fide* reasons, thus, the impugned order is liable to be quashed.

[4]. I have heard learned counsel for the petitioner and gone through the paper book.

[5]. Perusal of the record shows that petitioner was regularly appearing before the trial Court, even on 13.11.2018, he remained present for recording his statement and it was only on last two dates, petitioner did not appear. Even his absence on these two dates was not willful, but only on account of noting down the wrong date by his counsel for which he cannot be entirely blamed.

[6]. The question arises, as to whether High Court while exercising its power under Section 482 of the Cr.P.C. can set aside the order of dismissal in default of complaint instead of directing the petitioner to avail the alternate remedy of filing a revision petition, this Court has already discussed this issue at length in case titled as “*Amrinderpal Singh versus Harjit Singh*” passed in CRM-M 11797 of 2022 decided on 15.05.2024 while relying upon judgment passed by this Court in *Punjab State Warehousing Corporation Faridkot vs. M/s Shri Durga Ji Traders and others 2012 (1) R.C.R. (Criminal) 35*, and this Court was of the opinion that in the interest of justice, it would be appropriate to allow the petitioner to put forth his cause before the trial Court.

[7]. In view of aforesaid discussion as well as keeping in mind the law laid down in the aforementioned judgments, the entire fault regarding the non-appearance of the petitioner before the Trial Court cannot be attributed or burdened upon him, only in such situation and purely in the interest of justice and also to grant sufficient opportunity to the petitioner/complainant to put forth his cause before the Trial Court, the present petition is allowed and the impugned order dated 11.01.2019 passed by the Judicial Magistrate Ist Class, Phul, District Bathinda is hereby set aside, resultantly the complaint is restored to its original number. Since the respondent has not put in appearance before the Trial Court, he would be summoned afresh by the Trial Court intimating him about the restoration of the present complaint.

[8]. Pending application(s), if any, shall stand disposed of.

May 16, 2024
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Whether speaking/reasoned
Whether reportable

(HARKESH MANUJA)
JUDGE

Yes/No
Yes/No