

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-44974-2023 (O&M)
Date of decision: 03.04.2024

Roopa Pandeya ...Petitioner

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ritesh Tomar, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner seeking quashing of order dated 14.06.2023, passed by the learned Judicial Magistrate First Class, Gurugram in criminal complaint bearing No. COMI/496/2019, titled as Rupa Pandeya vs. Phool Singh, filed under Sections 323, 324, 354, 380, 427, 452, 454, 506, 34 of the IPC, whereby the said complaint had been dismissed in default for want of appearance of the petitioner.
2. Brief facts relevant for the purpose of disposal of the present petition are that the petitioner had filed aforementioned complaint against the private respondent on 03.10.2019. After registration of the complaint, the Magistrate had given direction to the concerned SHO to conduct investigation and to file action taken report. From that date onwards till 14.06.2023, the case was adjourned from time to time for awaiting the above

said action taken report by the concerned SHO. On 14.06.2023, neither the petitioner nor his counsel had appeared before the trial Court and, therefore, the trial Court passed the impugned order dismissing the complaint in default for want of appearance of the petitioner.

3. Learned counsel for the petitioner has submitted that the impugned order is not sustainable in the eyes of law and is liable to be set aside as she had been regularly appearing before the trial Court since the filing of the complaint and had never remained absent. It is submitted that since even on 14.06.2023, the case was fixed for awaiting the action taken report only, therefore, the trial Court could very well have adjourned the case to some other date. With these submissions, it is urged that the present petition deserves to be allowed and the impugned order is liable to be quashed. To fortify his argument, learned counsel for the petitioner has placed reliance upon judgment dated 01.03.2023, passed by Hon'ble Supreme Court in Criminal Appeal Nos. 657-664 of 2023, titled as ***M/s BLS Infrastructure Limited vs. M/s Rajwant Singh and others.***

4. I have heard learned counsel for the petitioner at considerable length and have also perused the material placed on record.

5. Copies of all the orders, as passed by the trial Court from the date of presentation of complaint which was 03.10.2019 till 14.06.2023 i.e. the date when the impugned order had been passed, have been placed on record by the petitioner, which reveal that after presentation of the complaint, the trial Court had adjourned the case for the purpose of filing of action taken report by the concerned SHO and no other effective proceedings whatsoever had been conducted by it, despite the fact that the complaint was ordered to be treated as filed under Section 200 Cr.P.C. No

doubt, under Section 256 Cr.P.C., if the complainant does not appear on the date appointed for appearance of the accused or any day subsequent thereto, to which the hearing may be adjourned, then the Magistrate shall acquit the accused unless for the reason, he thinks it proper to adjourn the hearing of the case to some other date. As per this section, three courses are open to a Court in a case, where the complainant is absent on the date of hearing. The Magistrate may (i) acquit the accused, or (ii) adjourn the case for a future date, or (iii) dispense with the attendance of the accused and proceed with the case. It is the discretion of the Court as to which course is to be followed by it in a particular case. However, such discretion is expected to be exercised in a judicious manner and should not be harsh towards the complainant as his/her absence on a particular date could be for umpteen reasons. Reliance in this regard can be placed upon ***C. K. Sivaraman Achari vs. D. K. Agarwal : 1978 CrL L.J. 1376***, wherein similar observations were made by the High Court of Kerala and it was also observed that while exercising the discretion, the Courts should not forget that their very existence is for dispensation of justice, no doubt within the frame-work of the statutes governing particular cases. But even such statutes should be availed of with a view to advance justice and not to deny it. The complainant usually approaches the court with a case that he/she has been wronged by the accused. Reliance can further be placed upon ***Nityanand Samal vs. Naraprasad : 1982 CrL L.J. 927***, wherein the High Court of Orissa has observed that in order decide whether the presence of the complainant is necessary, the Court should act judicially and not capriciously. A duty has been cast on the Court to consider whether personal attendance of the complainant is or is not necessary. A heavy responsibility rests on it in

deciding as to whether to adjourn the case or to record an order of acquittal. The discretion vested in the Court should be exercised carefully and not hastily. Similar observations were made by the Madras High Court in *Arumugham vs. Valliammal : 1982(2) Crl. L.J. 1609*.

6. In the instant case, the accused had not even been summoned so far and the present petitioner very sincerely and regularly had been attending each and every date of hearing given by the Court. Rather, it also appears from the record that the trial Court had not taken any stringent action against the concerned SHO, who had taken a time of about 04 years for filing the action taken report but the petitioner had been punished for the only default as committed by her for her non-appearance before the trial Court and her complaint had been dismissed. It is not a case where the petitioner was playing dilatory tactics. Rather, on the date of passing the impugned order also, it was the report of the SHO, which was awaited. As such, the presence of the petitioner was not necessary and, therefore, I am of the considered opinion that the trial Court was not justified in straightaway dismissing the complaint. Thus, the impugned order is liable to be set aside.

7. Accordingly, for the reasons as discussed above, the present petition is allowed. The impugned order dated 14.06.2023 is set aside. The matter is remanded back to the concerned Court, which shall restore the complaint to its original number and proceed further from the stage when impugned order was passed.

03.04.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes