

253

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-43849-2019

Date of decision: 22.02.2024

Gurdeep Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Rahul Arora, Advocate for the petitioner.

Mr. Baljinder Singh, DAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner/complainant under Section 482 Cr.P.C. for quashing of order dated 20.09.2019 (Annexure P-4) passed by the Court of learned Judicial Magistrate, Ist Class, Ferozepur in criminal complaint NACT/512/2016 titled Gurdeep Singh Vs. Jagtar Singh and Another, whereby the said Court dismissed the application (Annexure P-3) filed by the petitioner for recalling order dated 09.08.2018 (Annexure P-2) and for restoring the aforesaid complaint which was earlier dismissed qua respondent No.2 Jagtar Singh.

2. The brief facts of the case are that petitioner filed aforesaid criminal complaint under Section 138 Negotiable Instruments Act against respondents No.2 & 3 who are husband and wife. On completion of preliminary evidence, the said respondents were summoned by the trial

Court and then, respondent No.3 put in her appearance. However, respondent No.2 was not served for want of his correct address and the trial Court directed the petitioner to furnish the correct address of said respondent. However, petitioner failed to do the needful and consequently, the learned trial Court vide order dated 09.08.2018 (Annexure P-2) dismissed the criminal complaint against respondent No.2 for non compliance of the previous order. Thereafter, petitioner filed an application seeking recall of its order dated 09.08.2018 but the said application was dismissed by the learned trial Court vide order dated 20.09.2019 (Annexure P-4).

3. Being aggrieved, the petitioner has filed the present petition.
4. Notice of motion was issued for 17.12.2019.
5. Notice sent to respondent No.2 was received with report that he is lodged in jail. Respondent No.3 failed to respond despite her due service.
6. I have heard the counsel for the petitioner.
7. Counsel for the petitioner submits that after passing of the summoning order, respondent No. 3 appeared before the trial Court and was granted bail. However, respondent No.2 Jagroop Singh was not served for want of correct address and finally the criminal complaint was dismissed against respondent No.2 vide order (Annexure P-2) dated 09.08.2018 as the petitioner failed to provide the correct address of said respondent. The counsel for the petitioner has apprised the Court that at the relevant time, the whereabouts of respondent No.2 were not known as he was absconding being defaulter in number of cases and that even respondent No.3 was not aware of the whereabouts of respondent No.2, when order (Annexure P-2)

was passed by the trial Court. The counsel for the petitioner further submits that now the petitioner has come to know the present address of respondent No.2 and will provide the same to the trial Court. It is further submitted that order Annexure P-2 and Annexure P-4 deserve to be set aside, in the interest of justice.

8. The petitioner filed criminal complaint (Annexure P-1), under Section 138 NI Act with regard to dishonor of cheque worth Rs.2,43,150/-, wherein summoning order was passed against respondents No.2 & 3. The trial Court was unable to procure the presence of respondent No.2 for want of his correct address and petitioner failed to furnish the correct address of respondent No.2 and consequently, order Annexure P-2 was passed by the learned trial Court.

9. If the facts of the present case are examined, it would be too harsh to non suit the petitioner qua respondent No.2, merely on the ground that petitioner was unable to furnish the present address of the said respondent to the trial Court. The net effect of entire proceedings is that it is the petitioner/complainant who has been punished as against respondent No.2, who has been successfully evading service of summons and appearance before the Court to face trial, despite the fact that his wife (respondent No.3) responded to the summons sent on the address given in the complaint. It appears that earlier respondent No.2 was lodged in jail and now the correct address of respondent No.2 is available with the petitioner. Further the interest of justice demands that the criminal complaint filed by the petitioner should not be dismissed against respondent No.2 just on technical ground and requires to be disposed of on merits.

10. In the light of the above discussion, the present petition is allowed and order dated 20.09.2019 (Annexure P-4) and 09.08.2018 (Annexure P-2) are set aside. The complaint is directed to be restored against respondent No.2. The petitioner is directed to appear before the trial Court on the next date fixed in the trial, with further direction to the petitioner to furnish correct address of respondent no.2 to the trial Court within 15 days of the next date fixed in the trial, along with necessary process charges, failing which the present petition shall be deemed to have been dismissed.

22.02.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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