

2024:PHHC:096923



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-A-1787-MA of 2015
Date of Decision: 29.07.2024

Yadvinder Singh ...Appellant
Versus
Pawan Saini ... Respondent

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

Present : Mr. Abhishek Sahu, Advocate for
Mr. B.S. Bhalla, Advocate, for the appellant.

None for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The appellant has filed the present appeal against the impugned order dated 17.04.2014 passed by the Court of Judicial Magistrate 1st Class, Kurukshetra, whereby, the complaint filed by the present appellant was ordered to be dismissed in default.
2. Learned counsel for the appellant submits that the present appellant had filed a criminal complaint under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') against respondent on 25.01.2012, on account of dishonour of a cheque bearing No. 602568 dated 15.07.2011 for a sum of Rs.

54,000/- drawn on Punjab National Bank, G.T., Road, Karnal (Haryana). Learned counsel further contends that after filing of the complaint, the preliminary evidence was led and the respondent was ordered to be summoned by the trial Court. However, on 17.04.2014, the appellant could not appear before the trial Court as he had inadvertently noted the date of hearing as 19.04.2014. He further contends that the non-appearance of the appellant before the trial Court was unintentional and bonafide and the complaint may be restored to its original position.

3. In the present case, earlier Mr. Rajesh Verma and Mr. A.N. Saini, Advocates were appearing for the respondent. However, when the case has been taken up for final disposal, no learned counsel has appeared on behalf of the respondent.

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

5. From the record, it is apparent that the appellant had been regularly appearing before the trial Court, however, only on one date, i.e., 17.04.2014, the appellant/complainant could not appear before the Court and the case was ordered to be dismissed for non-prosecution.

6. 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.”

7. 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. In the present case, the appellant could not appear on one date i.e. on 17.04.2014 and the case was dismissed in default by the Trial Court in a hurry.

8. In view of the above discussion, the instant appeal is allowed and impugned order dated 17.04.2014 passed by the Court of Judicial Magistrate 1st Class, Kurukshetra, is ordered to be set-aside and the complaint is restored.
9. Since, it is an old case, the trial Court is directed to decide the main case on merits expeditiously, preferably within a period of six months from today.
10. The parties are expected to cooperate with the trial court for the expeditious disposal of the case.
11. Pending applications, if any, are also disposed off, accordingly.
12. The trial Court record be sent back.

29.07.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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