

2024.PHHC:100159



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

243

CRM-A-274 of 2020 (O&M)
Date of Decision: 01.08.2024

Arundip Singh		...Appellant
	Versus	
Satvir Kumar @ Santu		... Respondent

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

Present : Mr. Vikram Bali, Advocate, for the appellant.

N.S.SHEKHAWAT, J. (Oral)

CRM-4333-2020

1. Learned counsel for the applicant submits that vide order dated 04.09.2017, the complaint filed by the present applicant was ordered to be dismissed in default for want of prosecution. Due to wrong legal advice, the present applicant filed a criminal revision petition before the Court of Sessions immediately on 24.10.2017 against the impugned order. The said revision petition was withdrawn with liberty to file the present appeal before this Court.
2. Learned counsel for the applicant submits that the revision petition was filed under an erroneous belief that the revision petition was maintainable before the Sessions Court. However, after

withdrawing the criminal revision, the present appeal has been filed before this Court without any unreasonable delay.

3. On the other hand, despite service, the respondent has not appeared to assist the Court.

4. I have heard learned counsel for the applicant and for the reasons mentioned in the application, the delay of 778 days in filing the present appeal is ordered to be condoned.

CRM-A-274 of 2020

1. The present appeal has been preferred against the impugned order dated 04.09.2017 passed by the Court of Judicial Magistrate First Class, Phagwara, whereby, the complaint under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') filed by the present appellant/complainant was ordered to be dismissed in default for want of prosecution and the respondent had been acquitted.

2. Learned counsel for the appellant submits that the present appellant had filed a criminal complaint against the respondent. After filing of the complaint, the appellant was appearing before the trial Court on each and every date of hearing. Learned counsel for the appellant submits that only on one date. i.e., 04.09.2017, he could not appear before the trial Court due to the bonafide mistake and the trial Court had wrongly dismissed the complaint in default for non-prosecution.

3. Learned counsel for the appellant has relied upon the law laid down in the matter of **“Shakti Industrial Corporation Vs. Ridaus Auto Components Private Limited and other”**, 2015(8) RCR (Criminal) 457; **“Santosh Devi Vs. Mahinder Singh”**, 2015(2) R.C.R. (Criminal) 192 and **“The Associated Cement Co. Ltd. Vs. Keshvanand”**, 1998 (1) RCR (Criminal) 309.

4. In the present case, despite service, no one had appeared to assist the Court on behalf of the respondent.

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

6. From the record, it is apparent that the appellant had been regularly appearing before the trial Court, however, only on one date, i.e., 04.09.2017, the appellant/complainant could not appear before the Court and the case was ordered to be dismissed in default for non-prosecution.

7. 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.”

8. 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 04.09.2017 and the case was dismissed in default by the trial Court in a hurry.

9. In view of the above discussion, the instant appeal is allowed and impugned order dated 04.09.2017 passed by the Court of Judicial Magistrate 1st Class, Phagwara, is ordered to be set-aside and the complaint is restored.

10. Since, it is an old case, the trial Court is directed to decide the main case on merits expeditiously.
11. The parties are expected to cooperate with the trial court for the expeditious disposal of the case.
12. Pending applications, if any, are also disposed off, accordingly.

01.08.2024	(N.S.SHEKHAWAT)
amit rana	JUDGE
Whether reasoned/speaking	: Yes/No
Whether reportable	: Yes/No