



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

CRM-M-61128-2024

Date of Decision- 05.12.2024

JASWANT SINGH

.....PETITIONER

VERSUS

ANIL KUMAR

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vikas Kumar Dhaliwal, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

1. The petitioner, in this petition filed under Section 482 Cr.P.C., prays for quashing of the impugned order dated 15.10.2024, Annexure P-6, passed in Complaint No. COMA/57/2018 dated 01.05.2018 under Section 138 of the Negotiable Instruments Act, 1881, titled "Jaswant Versus Anil Kumar" by the learned Sub Divisional Judicial Magistrate, Kharkhoda, dismissing the complaint of the petitioner for non-appearance of the complainant and his counsel also.

2. It is contended by the learned counsel for the petitioner that two cheques bearing No.000002 & 000003 dated 02.01.2018 & 15.01.2018 of Kotak Mahindra Bank, Chandigarh Landran Road, Sohana, Punjab, issued by the respondent to the petitioner in order to discharge the legal liability for borrowing



Rs.6,00,000/- from the petitioner, on the pretext of starting a business in partnership with the petitioner/complainant and a duly Notary registered partnership deed was also executed on 16.10.2017 in this regard, were dishonoured twice due to the remarks “Insufficient Funds”. A legal notice was also served upon the respondent by the complainant/petitioner which was not responded at all. Hence, the complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short – ‘N.I.Act’) was filed by the complainant/petitioner. Notice of the complaint was issued by the learned Sub Divisional Judicial Magistrate, Kharkhoda (for short – ‘trial Court’), however, due to outbreak of epidemic of COVID-19, the case was adjourned for appearance and accused put up appearance after the lockdown and the case was at the stage of evidence but the learned trial Court has dismissed the complaint, vide order dated 15.10.2024, (Annexure P-6).

3. It is also contended on behalf of the petitioner that as per the information of the petitioner, the clerk of counsel for the petitioner before the Court below had noted down a wrong date as 29.10.2014 instead of 15.10.2023, due to which the counsel for the petitioner was not aware about the listing of the case on 15.10.2024 and the order itself shows that the case was called upto 4.00 P.M. on the said date. As such, the non-appearance of the petitioner’s counsel before the learned court below is neither intentional nor deliberate but to the reason mentioned above. Therefore, it is prayed that the order of the learned trial Court, dated 15.10.2024, Annexure P-6, may kindly be quashed and the complaint may be ordered to be restored on its original number and stage to decide the same afresh on merits.



4. Heard.

5. It is seen from the case file that the complaint was filed in the year 2018 and thereafter remained pending till 2024, i.e., 15.10.2024, when the complaint was dismissed due to non-appearance of the complainant/petitioner or his counsel. It is argued on behalf of the petitioner before this Court that the lapse was due to the wrong noting of the date by the Clerk by counsel for the complainant/petitioner before the learned trial Court.

6. The petitioner has relied upon the order dated 26.02.2024, Annexure P-7, passed by a Co-ordinate Bench of this Court in CRM-M-9906-2024 titled “Harpreet Singh Vs. Harpreet Singh” wherein the impugned order in the similar circumstances has been set aside while accepting the judgment passed by this Court in ‘Joga Singh Vs. State of Punjab and Others’ reported as (2007) 1 RCR (Criminal) 770, to the following effect:-

“8. Where however, summons are to be issued, the trial is to proceed under Chapter XX titled as “Trial of summons cases by Magistrates”. Section 256 thereof, prescribes the consequences for the non-appearance or death of a complainant. Section 256 Criminal Procedure Code, however, does not apply to the procedure prescribed at the pre-summoning stage.

9. It is, thus, apparent that Sections 200 to 203 of the Code, which govern procedure to be adopted, at the pre-summoning stage, do not impose any statutory duty upon a complaint to appear, in person on each date. His absence, therefore, cannot be a ground to dismiss a complaint for non-prosecution. Where, a complainant fails



to appear, whether in person or through counsel at the pre-summoning stage, the Magistrate is required to appraise the pleadings, the evidence if any, adduced in support thereof and thereafter proceed to either dismiss the complaint, in terms of Section 203 of the Code or issue process under Section 204 of the Code. At the pre-summoning state, Magistrate cannot dismiss a complaint for failure of the complainant to enter appearance and for want of prosecution.

10. A controversy, similar to the one in the present case, whether a complainant is required to be personally present on each and every date of hearing, was subject matter of Kuldeep Singh v. Harnam Singh and another 1982(9) The Criminal Law Times 289. After a perusal of the statutory provisions of the Code, it was held as follows:

“From a plain reading of this provision, it is clear that the Magistrate can dismiss the complaint if he, after considering the preliminary evidence of the complainant and his witnesses, and the result of the enquiry of investigation, if any, is of the opinion that there is no sufficient ground for proceeding. This is the only provision of law which deals with the dismissal of complaints. However, Section 249 and 256 of the Code deal with different situations. Section 249 relates to the cases where the offence is compoundable and non-cognizable and the Magistrate is empowered thereunder to discharge the accused if the complainant is absent. Section 256 comes into



play after the process is issued against the accused and the accused is present in Court and it deals with the non-appearance or the death of the complainant. Thus, these two sections come into play after the accused has been summoned and appears in Court. In the present case admittedly, the accused have not yet been summoned and the complaint was dismissed by the trial Court for the absence of the complainant.”

7. The order passed by the learned trial Court shows that the complaint has been dismissed under Section 256 of the Code of Criminal Procedure due to non-appearance of the counsel for the petitioner, however, the order does not disclose whether the non-representation was continuing from some earlier date. As such, it appears that the non-appearance is for the first time and for that particular date only. Thus, this Court taking a lenient view deems it appropriate to give a chance to the complainant/petitioner.

8. In view of the above discussion, the present petition is allowed and the impugned order dated 15.10.2024, Annexure P-6, is hereby set aside, subject to payment of cost of Rs.10,000/- for causing delay, to be deposited in the account (Account No.1445265900, IFSC Code KKBK0004211, maintained with Kotak Mahindra Bank, Sector 46-C, Chandigarh) of Chandi Kusht Ashtam Society, within 15 days from the receipt of a copy of this Order, and the matter is remanded back to the learned trial Court to decide the complaint afresh, after giving opportunity of hearing to both the parties, after production of Receipt of Rs.10,000/- by the complainant/petitioner before the learned trial Court, on the



very first day of proceedings of the complaint numbered and titled at the very outset of this order.

(SANDEEP MOUDGIL)
JUDGE

05.12.2024
anuradha

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