

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

110. CRM-M No.64587 of 2023 (O&M)
Date of Decision:05.01.2024

Mohinder Singh ... Petitioner

Versus

State of Punjab ... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gurjeet Singh Kaura, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for setting aside the order dated 12.11.2022 (Annexure P-9) passed by the learned Judicial Magistrate 1st Class, SAS Nagar, Mohali in FIR No.89 dated 17.07.2019 registered under Sections 341, 323 IPC at Police Station Phase-VIII, SAS Nagar, Mohali and further direct the learned trial Court to pass fresh order after hearing and evaluating the entire record.

2. Learned counsel appearing on behalf of the petitioner *inter alia* contends that the learned trial Court while passing the impugned order dated 12.11.2022 (Annexure P-9) has accepted the cancellation report without even considering the fact that the complaint filed by the petitioner was dismissed in default for non appearance vide order dated 18.10.2022. As such, the reasoning given in the impugned order dated 12.11.2022 (Annexure P-9) is totally erroneous and against the factual position of the case. It is further contended that

the learned trial Court while passing the impugned order has observed the following:-

“6....Moreover, the complainant has already filed protest petition. Therefore, in the interest of justice, I accept the cancellation report submitted by the Investigating Agency....

7. Accordingly, no further proceedings are required to be done in the present FIR....”

3. Learned counsel for the petitioner further contends that the petitioner being complainant has been rendered remediless and grave prejudice has been caused to him. The learned trial Court while accepting the cancellation report should have treated the case as a complaint case and then issued process to the accused under Section 204 Cr.P.C. The learned trial Court fell in grave error by not taking into consideration the medical evidence available on record with regard to injuries suffered by wife of the petitioner namely Paramjit Kaur. To substantiate the said contention, reference has been made to medical record (Annexure P-7).

4. Having heard learned counsel for the petitioner and after perusal of the record, it transpires that the statutory scheme provided under the Code of Criminal Procedure does not require the petitioner to appear on each and every date at pre summoning stage and his absence, therefore, cannot be a ground for dismissing the complaint for non-prosecution, in view of the judgment passed by this Court in ***Joga Singh Vs. State of Punjab and others (2007) 1 RCR (Criminal) 770.***

5. Furthermore, the petitioner cannot be left remediless. Chapter XIV of Cr.P.C. provides for procedure to be adopted on receipt of a complaint. Section 200 of Cr.P.C. provides for taking cognizance of a complaint, the

complainant and his witnesses are to be examined. Section 203 of Cr.P.C. empowers the Magistrate to dismiss the complaint if after considering the statement on oath or upon inquiry made under Section 202 of Cr.P.C., he finds there is no sufficient ground for proceeding further. The statutory scheme contained in Chapter XIV, however, does not contain any provision which require complainant to be personally present before a Court on each and every date of hearing. As such before issuance of process under Section 204 of Cr.P.C. the complaint cannot be dismissed in default for non-prosecution due to the non-appearance of the complainant. A similar controversy has been dealt by this Court in the judgment passed in 'Kuldip Singh Vs. 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 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, Sections 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.”

6. In view of the submissions made by learned counsel for the petitioner and the ratio of law as discussed above, the present petition is disposed of *in limine*. Consequently, the impugned order dated 12.11.2022 (Annexure P-9) is set aside and the matter is remanded back to the jurisdictional Court to pass a fresh order in accordance with law.

(HARPREET SINGH BRAR)
JUDGE

January 05, 2024
Pankaj*

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