



2024:DHC:4035



\$~23

* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 17.05.2024***+ **CRL.M.C. 2764/2022 & CRL.M.A. 11465/2022****SUKHRAM BANSAL**

..... Petitioner

Through: Mr.S.Mishra, Mr.Alok Pandey,
Advs.

versus

ASHOK KUMAR

..... Respondent

Through: Mr.Ashok Kumar, Adv. for the
complainant.
Mr.Aman Usman, APP**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the order dated 17.09.2021 passed by the learned Principal District and Sessions Judge, Delhi, North East, Karkardooma Courts, Delhi in Crl.Rev. Pet. No.27/2021, titled ***Ashok Kumar v. Sukhram Bansal***, setting aside the order dated 07.09.2021 passed by the learned Metropolitan Magistrate, NI Act/Digital Court, North East District, Karkardooma Courts in CC no.43/2021, subject to payment of costs of Rs.5,000/- to be deposited by the respondent in the Delhi State Legal Services Authority.

Signature Not Verified

Digitally Signed
By: SUNIL
Signing Date: 22.05.2024
19:17:05

Crl.M.C. no.2764/2022

Page 1 of 8



2024:DHC:4035



2. The above complaint case has been filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 (in short 'NI Act') against the petitioner herein. The learned Trial Court had been pleased to issue summons against the petitioner/accused on the said complaint.

3. On 26.02.2021, the learned Trial Court was pleased to pass the following order:

*"None for the complainant.
Matter be put up at 11:00 am.*

*None for the complainant
Matter be put at 12:00 pm.*

*None for the complainant.
Summons issued against the accused received back served only through Whatsapp and not through email. So may not be considered. Summons issued against the accused through post not received back. Let the same be received.*

*In the meanwhile to avoid further delay, let fresh summons be issued against the accused through all available modes including speed post returnable for **01.04.2021**. PR/RC be filed by the complainant within three working days. Complainant is directed to file the postal receipt alongwith tracking report attached with certificate under Section 65B of Indian Evidence Act."*

4. Therefore, though the summons had been served on the petitioner/accused through Whatsapp, the Court did not consider it to be proper service of summons, and directed fresh summons to be issued against the petitioner/accused on filing of the process fee and registered cover by the respondent.



2024:DHC:4035



5. By the order dated 07.09.2021, the learned Trial Court noted that the respondent/complainant had not been appearing before the Court for the last three dates and had not even filed the process fee for issuance of fresh summons against the petitioner/accused. The learned Trial Court, therefore, dismissed the petition under Section 204 (4) of the Cr.P.C..

6. The respondent challenged the said order by way of a Revision Petition, being Crl. Rev. Pet. No.27/2021, which was allowed by the learned Principal District and Sessions Judge/Revisional Court by the Impugned Order.

7. The learned counsel for the petitioner submits that the Impugned Order fails to appreciate that the learned Trial Court had erred in dismissing the complaint case under Section 204 (4) of the Cr.P.C. He submits that as summons in the complaint case had already been issued, the complaint could have been dismissed only under Section 256 of the Cr.P.C., and against such order, revision was not maintainable and the only remedy with the respondent was in form of an application seeking leave to appeal under Section 378 (4) of the Cr.P.C.. In support, he places reliance on the judgment of the High Court of Bombay in **Gajanan Parshuram Chopade v. Mahatma Jyotirao Phule Gramin Bigarsheti Sahakari Patsanstha Maryadit, Barloni**, 2008 SCC OnLine Bom 1000.

8. On the other hand, the learned counsel for the respondent submits that as the complaint had been dismissed on account of non-filing of the process fee by the respondent/complainant and under Section 204 (4) of the Cr.P.C., the proper remedy of the respondent



2024:DHC:4035



was in form a Revision Petition under Section 397 of the Cr.P.C., which had been rightly invoked by the respondent.

9. He further submits that post the Impugned Order, the petitioner had in fact appeared before the learned Trial Court and the trial has proceeded to the stage of recording of the statement of the petitioner/accused. He submits that this petition is, therefore, liable to be dismissed even on the ground of delay in filing.

10. I have considered the submissions made by the learned counsels for the parties.

11. Section 204 of the Cr.P.C. reads as under:

“204. Issue of process.—(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under Sub-Section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under Sub-Section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed



2024:DHC:4035



to affect the provisions of section 87.”

12. Sub-section (4) of Section 204 states that where the process fee has not been filed by the complainant within the reasonable time, the learned Magistrate may dismiss the complaint.

13. In the present case, the learned Trial Court dismissed the complaint filed by the respondent, vide its order dated 07.09.2021, exercising the powers vested in it under Section 204(4) of the Cr.P.C..

14. Section 256 of the Cr.P.C. reads as under:

“256. None-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, or 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.”*

15. The above provision would apply if the summons have been issued on the complaint, and on the date of appearance of the accused or any date subsequent thereto to which the hearing may be adjourned, the complainant does not appear. In such a case, the learned



2024:DHC:4035



Magistrate shall acquit the accused unless for some reason the learned Magistrate thinks it proper to adjourn the hearing of the case to some other date.

16. In the present case, the summons had not been issued to the petitioner for want of process fee by the respondent. The earlier summons issued on the petitioner and served through whatsapp were not deemed to be proper service by the Magistrate, as recorded in its order dated 26.02.2021, and for that reasons, fresh summons were directed to be issued.

17. Resultantly, there was no occasion for the petitioner /accused to appear before the learned Trial Court on the returnable date.

18. A harmonious reading of Section 204(4) of the Cr.P.C. with Section 256 of the Cr.P.C. would lead to the conclusion that where the Court issues summons, however, the complainant fails to file the process fee for effecting service of the same on the accused, the Magistrate may exercise its powers under Section 204(4) of the Cr.P.C. to dismiss the complaint. However, where the summons are issued and the complainant files the process fee for service of the summons on the accused, however, on the returnable date the complainant does not appear, the Magistrate may, in exercise of its power under Section 256 of the Cr.P.C., acquit the accused.

19. The effect of exercise of powers under the two Sections is also different. While under Section 204(4) of the Cr.P.C., the complaint is dismissed, under Section 256 of the Cr.P.C., the accused is acquitted. The remedy against the two orders would, therefore, also be different. For challenging the order under Section 204(4) of the Cr.P.C., the



2024:DHC:4035



complainant has the remedy of invoking the revisional power under Section 397 of the Cr.P.C., while against an order under Section 256 of the Cr.P.C., the only remedy with the complainant would be to file an application seeking leave to appeal under Section 378(4) of the Cr.P.C..

20. In **Gajanan** (Supra), the complaint was dismissed at the stage of recording of the evidence of the complainant by invoking the powers under Section 256 of the Cr.P.C., whereas, in the present case, the learned Magistrate has dismissed the complaint for non-prosecution and by invoking power under Section 204(4) of the Cr.P.C. The said judgment would, therefore, have no application to the facts of the present case.

21. Section 256 of the Cr.P.C., appears in Chapter XX which deals with '*Trial of Summons-Case by Magistrates*'. The Chapter considers the trial of cases post the appearance of the accused on summons being served on the accused. In the present case, as summons have not been issued/served, Section 256 of the Cr.P.C. did not have application.

22. In fact, in the present case, the Magistrate had rightly invoked its power under Section 204(4) of the Cr.P.C. to dismiss the complaint due to non-filing of the process fees by the respondent/complainant. The proper remedy available with the respondent /complainant was to file revision under Section 397 of the Cr.P.C., which the respondent/complainant duly invoked.

23. In **Krishnakutty v. Ramani & Anr.**, 2021 SCC OnLine Ker 3224, the High Court of Kerela observed as under:



2024:DHC:4035



“22. Thus the law emerges from the above discussion is as under:

- (i) *If the dismissal of a complaint is for non appearance or death of the complainant, after appearance of the accused on service of summons or otherwise, the same amounts to acquittal of the accused under Section 256 of Cr.P.C. and therefore the remedy of the complainant is to file an appeal as provided under Section 378(4) of Cr.P.C.*
- (ii) *If a complaint is dismissed for non payment of process fees or other fees dealt under Section 204(4) Cr.P.C, the same is not an appealable order and therefore, the said order is revisable.”*

24. In view of the above, and as otherwise no other submission has been made by the learned counsel for the petitioner to challenge the Impugned Order, I find no error in the Impugned Order.

25. The petition is accordingly dismissed. The pending application also stands disposed of.

NAVIN CHAWLA, J

MAY 17, 2024
RN

Click here to check corrigendum, if any