



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

Sr. No. 131

CRM-M-1258-2025(O&M)

Date of Decision:14.01.2025

Punjab National Bank

...Petitioner

VERSUS

Jai Bhagwan

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Vinod Gupta, Advocate
for the petitioner.

SANJAY VASHISTH, J.(ORAL)

1. By way of present petition filed under Section 482 Cr.P.C., petitioner is seeking quashing of order dated 22.11.2024(annexed as Annexure P-5), vide which complaint bearing registration No. NACT/186/2024 dated 01.07.2024 has been dismissed for want of prosecution.

2. Learned counsel for the petitioner submits that an amount of Rs.1,42,000/- which is public money is involved in the instant case. The petitioner Bank has filed a complaint under Section 138 of Negotiable Instruments Act against the respondent and on account of non-appearance of the complainant or even its counsel on 22.11.2024 (Annexure P-5), the same has been dismissed for want of prosecution, even prior to the initiation of recording of preliminary evidence.

3. Learned counsel for the petitioner does not dispute the fact that the responsibility to lead preliminary evidence is upon the complainant only and none else. He also submits that he may be granted one more opportunity to produce preliminary evidence and in support of his arguments, he has

placed reliance upon the order dated 21.12.2023 passed by Co-ordinate Bench of this Court in CRM-M-64625-2023 as well as judgments passed by this Court in Joga Singh vs. State of Punjab and others (2007) 1 RCR (Criminal) 770 and Kuldeep Singh vs. Harnam Singh and another, 1982 (9), the Criminal Law Times 289 wherein the prayer for restoration of the complaint made by the complainant in limine was accepted.

4. In Kuldeep Singh's case (supra), the following observations have been held:-

“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.”

5. In addition, Mr. Vinod Gupta, Advocate submits that Chapter XIV of the Code of Criminal Procedure provides for procedure to be adopted on a receipt of a complaint and the said Chapter does not contain any provision, which require personal presence of the complainant before a Court. Thus, he submits that before issuance of process under Section 204 of Cr.P.C., the complaint cannot be dismissed in default for non-prosecution due to his non-appearance.

6. Since, till now proposed accused/respondent has not even been summoned, this Court does not find any rationale to call their presence before this Court. Rather deciding the petition in limine would save unnecessary delay and no prejudice would also be caused to the respondent.

7. Without making any observations over the submissions addressed by Mr. Gupta as well as the public money, if any, is involved, however by placing reliance upon the observations made by the ratio of law laid down in Kuldp Singh's case (supra) and Joga Singh's case (supra) (as discussed in the order relied upon), the present petition is allowed in limine and impugned order dated 22.11.2024(Annexure P-5) is set aside subject to the payment of Rs.12,000/- as costs to be deposited with the Sangam Charitable Trust, Tohana, District Fatehabad within two weeks from today.

7. Petitioner is hereby directed to appear before learned trial Court on or before 30.01.2025 and thereupon the learned trial Court would proceed from the stage the case was dismissed in default for non-prosecution and decide the same in accordance with law.

(SANJAY VASHISTH)
JUDGE

14.01.2025
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Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No