



CRM-M-15900-2024

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

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CRM-M-15900-2024 (O & M)

Date of decision: 26.08.2025

Vishal Bajaj

....Petitioner

Versus

Raju and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Jaspreet Singh Brar, Advocate,
for the petitioner.

None for respondent No.1.

Mr. Iqbal Singh, AAG, Punjab.

AMAN CHAUDHARY, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C., for setting aside the order dated 24.01.2024 passed by learned JMIC, Faridkot, vide which Criminal Complaint bearing No.NACT-510-2020, titled as 'Vishal Bajaj vs. Raju, under Section 138 read with Section 142 NI Act and Section 357 Cr.P.C., was dismissed in default for want of prosecution.

2. Learned counsel for the petitioner would submit that the trial Court had wrongly dismissed the complaint in default without taking into consideration that it was being pursued properly and had reached the stage of recording the evidence. He was unable to attend and had even



requested his counsel to file an application seeking exemption from personal appearance, but who also could not appear. His absence was neither intentional nor willful and he would have gained nothing by absenting or delaying the proceedings, which as a matter of fact, had been pending since 2020.

3. Heard.

4. As is discernible from the complaint that accused-respondent No.1 issued a cheque amounting to Rs.1,50,000/- in favour of the complainant-petitioner, to discharge his legal debt, which on presentation got dishonoured, due to 'insufficient funds'. A complaint under Section 138 NI Act was filed by the petitioner, wherein summoning order was passed, however, but due to absence of the complainant-petitioner as well as his counsel, the said complaint came to be dismissed in default for want of prosecution, vide impugned order dated 24.01.2024.

5. It is apposite to make a reference to Section 256 CrPC, which reads thus:

“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, 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.”

6. As is evident from the provision of Section 256 Cr.P.C., it comes into play only after issuance of summons to an accused, but at the post-summoning stage. Manifestly, the aforesaid provision provides plentitude power to the Magistrate in the matter of dismissal of a complaint for non-prosecution, to proceed with the case, despite the absence of the complainant, in the eventuality, he comes to a conclusion that the attendance of the complainant, who if represented through by a pleader or by officer conducting the prosecution was not necessary on that particular day, or adjourn the same, of course on some plausible grounds, however, while exercising his discretion, in case he decides to dismiss the same in default for want of prosecution at such a juncture, the upshot of which would be acquittal of the accused.

7. In **V.K. Bhat vs. G.Ravi Kishore and another**, (2016) 13 SCC 243, Hon’ble The Supreme Court considering the question as to whether in a case where the complaint was dismissed, the same tantamounts to acquittal and in such a situation whether a revision would lie under Section 397(3) CrPC or an appeal under Section 378(4) Cr.P.C., held that, “After hearing the learned counsel for the parties, we find that there is some force in the submissions made by learned counsel appearing for the appellant and we hold, in the facts of the case, that dismissal of the complaint for non-prosecution of the complainant amounts to acquittal as contemplated in section 256 of the Code of Criminal Procedure, 1973.”

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8. There is a clear distinction drawn as regards the dismissal of complaints for non-prosecution prior to the order of summoning and thereafter. As a natural corollary of operation of Section 256 Cr.P.C., to challenge an order dismissing a complaint post the issuance of the summoning order, only appeal against acquittal would be maintainable.

9. Applying the aforesaid provision of law and the judgments to the facts of the present case, this Court finds that the present petition is not maintainable and as such, the same is dismissed. However, reserving the petitioner a liberty to pursue the remedy, in accordance with law.

26.08.2025

parveen kumar

**(AMAN CHAUDHARY)
JUDGE**

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