



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

CRM-M-16597-2025
Date of decision: 21.04.2025

Kuldeep @ Kuldeep Rana

...Petitioner

V/S

The State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Abhimanyu Singh, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') against impugned order dated 26.07.2024 passed by learned Judicial Magistrate Ist Class, Karnal vide which the complaint bearing No.COMI-423-2017 filed under Sections 323, 325, 307, 452, 504, 506/34 IPC was dismissed for want of prosecution.

2. Brief, the facts, as alleged, are that about one and a half years ago, the petitioner had purchased a motorcycle from accused- Jitender for a consideration of Rs.22,000/-. However, Jitender kept postponing the transfer of ownership of the said vehicle to the petitioner. When the petitioner requested to transfer the same to him, he threatened to teach him a lesson. On 12.07.2017, Jitender and other accused came to the house of the petitioner and started beating him and his wife namely Neelam. The petitioner moved an application dated 12.07.2017 against the accused, which further annoyed them. Consequently, on 15.07.2017, all the accused persons, armed with *laathi*



and *kassi*, came to the house of the petitioner and caused severe injuries to him and his relative namely Ramesh.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner went to Sushil Garg Hospital on 14.06.2024 where he was undergoing treatment for his eyes. Since the medication did not provide him with any relief, he underwent cataract surgery on 21.11.2024, as evidenced by discharge summary(Annexure P-9). The petitioner only failed to appear on 26.07.2024 before the learned trial Court due to his medical condition. Now, the petitioner is medically fit and is capable of completing preliminary evidence. Moreover, CW-Ramesh has already been examined. As such, the learned trial Court has fallen into grave error causing serious loss to the petitioner by dismissing his complaint(supra) for want of prosecution as the same would amount to acquittal in terms of Section 256 of the Cr.P.C. Reliance in this regard is placed on the judgment rendered by the Hon'ble Supreme Court in ***Ranjit Sarkar vs. Ravi Ganesh Bharadwaj and others in Criminal Appeal No. 1593 of 2025 (Arising Out of SLP (Crl.) No. 205 of 2025)*** decided on 17.03.2025 and this Court in ***Purshotam Mantri vs. Vinod Tandon alias Hari Nath Tandon 2009(1)R.C.R.(Criminal) 442*** and ***Jitender Bajaj vs. State (U.T. Chandigarh) and others 2005(3)R.C.R.(criminal) 69***.

4. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, it transpires that the matter has been at the stage of preliminary evidence since the year 2007. A perusal of the impugned order does not reflect that the petitioner has been intentionally and continuously avoiding the proceedings of the Court. The petitioner has provided a genuine and reasonable explanation for seeking repeated



adjournments in the present case as he had been undergoing medical treatment with respect to his eyes.

5. The reliance placed by the learned counsel on ***Purshotam Mantri(supra)***, ***Jitender Bajaj (supra)*** and ***Ranjit Sarkar(supra)*** is erroneous as they pertain to summons trials, particularly Section 256 of the Code of Criminal Procedure, 1973, which is not applicable to the case at hand. However, this Court is of the considered opinion that dismissing the complaint(supra) for want of prosecution would be rather harsh as the petitioner only failed to appear due to medical reasons. Moreover, the nothing indicates that the reasons for absence have been questioned or disbelieved. Since there is no hard and fast rule guiding the recall of an order whereby a complaint has been dismissed in default, this Court believes that ends of justice would be met if the petitioner is given one more opportunity to pursue the proceedings before the learned Court below.

6. Accordingly, the present petition is disposed of in the following terms:

- i. The impugned order dated 26.07.2024 passed by learned Judicial Magistrate Ist Class, Karnal, is set aside.
- ii. The learned trial Court is directed to grant one more opportunity to the petitioner to conclude preliminary evidence, subject to depositing a cost of Rs.5,000/- with District Legal Services Authority, Karnal.
- iii. The complaint (*supra*) is ordered to be restored to its original number at the stage from where it was dismissed by the learned trial



Court and the said Court is directed to proceed further strictly as per law, after giving notice to the parties concerned.

7. Pending miscellaneous application(s), if any, shall also stand disposed of.

21.04.2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |