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

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CRM-M-52624-2023 (O&M)
Date of decision: 21.03.2025

Manpreet Singh

...Petitioner

Versus

Superintendent of Police, Mohali and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ishan Gupta, Advocate
for the petitioner.

Ms. Himani Arora, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition is for setting aside the order dated 09.01.2023 (Annexure P-1), passed by the Court of learned Judicial Magistrate First Class, Dera Bassi in case bearing No. CRM-134-2016, titled as ***Manpreet Singh vs. SP, Dera Bassi etc.***, whereby the application filed by the petitioner filed under Section 156(3) of Cr.P.C. has been dismissed in default on account of non-appearance of his counsel.

2. Learned counsel for the petitioner has submitted that the impugned order is not sustainable in the eyes of law as while passing the same, the learned Magistrate has not applied its judicious mind. It is further submitted that the aforesaid application filed by the petitioner under Section 156(3) of Cr.P.C., whereby notice was issued to SHO concerned on 05.01.2022 for submitting the status report as well as FSL report. The status report was submitted on 30.07.2022 before the Court and the case was fixed for arguments. However, unfortunately, his counsel namely Mr. H. S. Rana, Advocate, who was representing him petitioner before the Court, had died on 08.07.2022.

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Thereafter, vide impugned order dated 09.01.2023, the learned Magistrate, by observing that there was no representation on behalf of the petitioner despite the case being called several times, had dismissed the same in default. It is argued that since the counsel of the petitioner had died on 08.07.2022, he was not aware of the dates of the case and could not hire another counsel to represent him. His absence before the Court concerned was neither intentional nor deliberate. Hence, it is urged that the petition deserves to be allowed, impugned order deserves to be set aside. To fortify his arguments, learned counsel for the petitioner has relied upon authority cited as ***Murari Lal vs. Madan Lal and others : 1996 (2) RCR (Criminal) 657***, wherein it was observed that non-appearance of the complainant due to *bonafide* mistake could not lead to dismissal of his complaint in default.

3. *Per contra*, learned Assistant Advocate General, Punjab has opposed the prayer of the petitioner by submitting that there is no infirmity or illegality in the impugned order as the aforesaid application filed by the petitioner under Section 156(3) of Cr.P.C. was dismissed in default by the Court concerned due to non-representation on behalf of the petitioner before it. Hence, it is urged that the petition is liable to be dismissed.

4. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

5. As revealed from the record, the petitioner had filed aforesaid application under Section 156(3) of Cr.P.C., which was pending before the Court of learned Judicial Magistrate First Class, Dera Bassi. The petitioner was being represented before the Court concerned through Mr. H. S. Rana, Advocate, who had admittedly died on 08.07.2022. A copy of death certificate

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of said counsel has also been placed on record as Annexure P-7. The learned Magistrate had dismissed the aforesaid application in default by passing the impugned order on the ground that there was no representation on behalf of the petitioner. It is apparent that non-appearance of the petitioner before the Court concerned was not intentional as his counsel had died and he was not aware about the dates of the case fixed before the Court. In view thereof, I am of the considered opinion that the impugned order does not deserve to sustain. Accordingly, the present petition is allowed and the impugned order is set aside. The trial Court is directed to restore the case to its original number and stage and decide the same on its merits. The petitioner is directed to appear before the Court concerned on 22.04.2025.

21.03.2025

Waseem Akbari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No