2026:PHHC:008414

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-10955-2023 (O&M)
Date of decision: 21.01.2026

Balwinder Singh ...Petitioner(s)

VERSUS

Mahindra & Mahindra Financial Services Limited ...Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Munish Garg, Advocate for the petitioner(s).

Mr. Nitin Thatai, Advocate and
Ms. Monika Thatai, Advocate for the respondent(s).

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VINOD S. BHARDWAJ, J. (Oral)

1. The instant petition under Section 482 Cr.P.C. has been filed for quashing of the restoration order dated 15.12.2021 passed by the Judicial Magistrate 1st Class, Sangrur, whereby the complaint filed by respondent against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (bearing No. NACT-915-2017 instituted on 10.10.2017) has been ordered to be restored to its original number, after the same had been dismissed for want of prosecution by the same Court, vide its order dated 06.10.2021 as the same would amount to a review of its own order.

2. Learned counsel appearing on behalf of the petitioner submits that the petitioner had availed a loan from the respondent–Company and, at the time of availing the said loan, he had furnished a cheque by way of security. It is contended that the said security cheque was subsequently

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misused by the respondent–Company, resulting in the institution of a complaint dated 10.10.2017 bearing No. NACT-915-2017, titled Mahindra & Mahindra Financial Services Limited v. Balwinder Singh, alleging commission of an offence under Section 138 of the Negotiable Instruments Act, 1881.

3. It is further submitted that pursuant to the summoning order, the petitioner appeared before the trial Court on 13.05.2019, whereafter the trial commenced in accordance with law.

4. On 06.10.2021, the respondent - Company/complainant moved an application seeking exemption from personal appearance. The said application was however declined and the complaint was dismissed for want of prosecution.

5. Learned counsel submits that thereafter, the respondent - Company moved an application dated 14.10.2021, i.e. after a period of one week from the dismissal of the earlier application, for seeking restoration of the same.

6. The said restoration application was allowed by the learned trial Court vide order dated 15.12.2021, subject to payment of costs of Rs. 2,500/- to be deposited with the District Legal Services Authority, Sangrur and the complaint was ordered to be restored to its original number.

7. Aggrieved by the aforesaid order dated 15.12.2021, the present petition has been filed.

8. Learned counsel appearing on behalf of the petitioner contends

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that in view of the bar contained under Section 362 Cr.P.C., a Court cannot alter, review, or modify its judgment or final order once the same has been signed, save and except for the limited purpose of correcting clerical or arithmetical errors. It is contended that the order dismissing the complaint for want of prosecution amounted to a final order disposing of the said petition and the learned Illaqa Magistrate lacked the jurisdiction to subsequently restore the same to its original number. By allowing the restoration application and reviving the proceedings, the Magistrate has transgressed the statutory limitation on jurisdiction and has undertaken an impermissible review of a final order, which is expressly prohibited under Section 362 Cr.P.C. After the order of dismissal had been passed, the Magistrate became functus officio and could not have recalled or set aside the said order. Learned counsel further submits that, if the respondent–complainant was aggrieved by the dismissal of its application, the appropriate and legally permissible course available to it was to approach the Court of Sessions by way of an appeal or revision and not to seek restoration before the same court by filing an application styled as one for recall or restoration.

9. Learned counsel appearing on behalf of the respondent submits that the application for restoration was submitted within a period of one week from the date of dismissal and the same was restored without delay. The petitioner, despite having acquired knowledge of the restoration of the complaint, deliberately chose to evade the proceedings and approached this

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Court only in the year 2023. Learned counsel further submits that he does not dispute the legal proposition insofar as the bar imposed under Section 362 of the Code of Criminal Procedure, 1973 is concerned, however, the procedural laws are handmaiden of justice and that a hyper-technical application of procedural provisions ought not to defeat the cause of substantial justice. It is further submitted that this Court, in exercise of its inherent jurisdiction under Section 482 Cr.P.C., is empowered to examine the matter in its entirety and to pass appropriate orders to secure the ends of justice. It is further contended that even though the respondent–complainant could have approached the Court of Sessions by way of an appeal or revision, however, relegating the parties to such a remedy, at this belated stage, would serve no fruitful purpose. Learned counsel further submits that the absence of the complainant was only on a single date and that the application for restoration was filed promptly, without any inordinate or unexplained delay. In these circumstances, the respondent cannot be accused of being negligent in prosecuting the complaint.

10. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended with the instant petition, with their able assistance.

11. I find myself in agreement with the learned counsel for the petitioner to the extent that the impugned order dated 15.12.2021, whereby the complaint was restored to its original number, cannot be sustained in law in view of the bar under Section 362 of the Code of Criminal Procedure,

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1973. However, I find myself in disagreement with the counsel for the petitioner, under the facts of the present case, to accept the arguments that the present petition be dismissed and the respondent–complainant/Company be relegated to approach the Court of Sessions by way of an appeal. The jurisdiction of this Court has been invoked under Section 482 Cr.P.C. which reads thus:-.

> ***"Saving of inherent powers of High Court.***
>
> *Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice"*

12. It has been put to the counsel for the petitioner that as to whether, in the exercise of inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973, this Court would be competent to set aside the impugned order and yet issue an appropriate direction for restoration of the complaint to secure the ends of justice. Counsel for the petitioner is not in a position to dispute the aforesaid position and concedes that this Court would have such a power. He has been afforded an opportunity to advance submissions on the limited question as to whether, in the facts and circumstances of the present case, such inherent power ought to be exercised or not? He is not in a position to give any argument as to why the inherent jurisdiction be not exercised by this Court.

13. Taking into consideration the aforesaid position and noticing

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that:-

(i) the complaint in question has been filed in the year 2017 and the respondent-complainant/Company had been appearing before the Court on all dates except on 06.10.2021, when an application for exemption was moved but the same was rejected and the case was dismissed in default;

(ii) the application for restoration was filed within a period of one week i.e. on 14.10.2021. Hence, there was no inordinate delay in moving the application for restoration which reflects the intent of the respondent-complainant in diligently pursuing the matter;

(iii) If the respondent–complainant was to be relegated to the remedy of filing an appeal before the Court of Sessions against the impugned order, the final adjudication shall be unnecessarily delayed. It has already remained pending for a period of nearly 9 years without much progress.

(iv) The technicalities of law are intended to subserve the cause of justice and not to thwart it and they ought not to be applied in a manner that confers an undue advantage upon a party who seeks to rely upon such technicalities solely to defeat the legitimate interests of the

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complainant.

9. In the present case, it is a matter of record that there was no inordinate delay in moving the application for restoration. Despite being fully aware of the restoration of the complaint, the petitioner consciously chose to evade participation in the proceedings and approached this Court, after a lapse of nearly two years from the date of restoration. Such conduct indicates that the predominant intent of the petitioner is to protract the proceedings and delay the final adjudication of the complaint. The process of law can neither be permitted to be used as a shield by a litigant acting with oblique motives nor can it be allowed to become an instrument in the hands of a mischievous litigant to frustrate the cause of justice

10. Section 482 of the Code of Criminal Procedure, 1973, vests this Court with an inherent jurisdiction to pass appropriate orders, irrespective of the party that has approached the Court or initiated the proceedings. The touchstone for the exercise of such inherent power is not the identity of the litigant but the necessity to prevent abuse of the process of any Court and to otherwise secure the ends of justice. Where the facts and circumstances so warrant, this Court would be failing in its duty if it were to decline the exercise of such power on hyper-technical or procedural considerations alone.

11. I find that granting a leverage to the petitioner to succeed in the present petition solely on the basis of a technical objection would amount to allowing the process of law and procedural technicalities to be put to an

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abuse, thereby delaying the proceedings and impeding the final adjudication of the rights of the parties inter se. Consequently, while the impugned order dated 15.12.2021 passed by the learned Judicial Magistrate First Class, Sangrur, restoring the complaint to its original number, is set aside, this Court, in the exercise of its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973, deems it appropriate to set aside the earlier order dated 06.10.2021, whereby the complaint was dismissed for want of prosecution. Consequently, the original complaint is ordered to be restored to its original number.

12. Counsel for the petitioner further undertakes that the petitioner shall appear before the trial Court within a period of 15 days from today.

13. The petition is ***disposed of***.

14. The petitioner shall remain bound by the undertaking to appear before the trial Court so that expeditious adjudication the pending complaint can be done by the trial Court.

(VINOD S. BHARDWAJ)
JUDGE

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

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