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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25870-2025
DECIDED ON: 13.05.2025

M/S IKKAS FOOD STORE THROUGH ITS PROPRIETOR
.....PETITIONER

VERSUS

PARVEEN
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ved Parkash, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. This is Petition under section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 (earlier under Section 482 of Code of Criminal Procedure 1973) praying for Quashing the impugned order dated 16.08.2023 (Annexure P-3) passed by Learned JMIC, Jind, in Case NACT No.400 of 2017 titled as M/S Ikkas Feed Store vs. Parveen wherein the complaint u/s 138 of NI Act dated 05.07.2017 (Annexure P- 1) has been dismissed in default for wants of prosecution, in the interest of justice, equity and fair play.

2. It has been contended on behalf of learned counsel for the petitioner that the non-appearance of the petitioner before the trial Court is neither intentional nor willful but on account of the fact that due to personal difficulty on 16.08.2023 the petitioner could not appear before the Trial Court rather no application for personal exemption could be filed by his counsel. He further submits that the petitioner was pursuing the matter very sincerely and cautiously and was appearing on each and every date as is evident from the Annexure P-2 annexed with the petition but the Trial

Court passed order dated 16.08.2023 whereby the complaint has been dismissed in default on account of non-appearance of petitioner.

3. Heard.

4. The trial Court has dismissed the complaint in the absence of the learned counsel for the complainant on the ground that the case was called several times since morning but neither complainant nor anybody on behalf of him came present before the Court. It was further observed that the complainant could have moved an application seeking personal exemption from appearance but he failed to do so and even his counsel has not come present to pursue the matter.

5. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of petition, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the Court to inquire as to what is happening in the Court with regard to his case nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. The problem that agitates is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanor of his agent. The answer obviously is in the negative.

6. In view of the foregoing, discussion, it is held that the trial Court has adopted a very casual and pedantic approach while dismissing the complaint of the petitioner which he was pursuing very sincerely since 2017 and the trial Court has ignored the basic principle of law that rules of procedure are handmade of administration of justice and the same are to be applied to enhance the cause of justice and not to defeat the same.

7. Thus, by restoring the present complaint this Court is of the view that neither of the parties would suffer prejudice rather it would help in facilitation of the case to secure the ends of justice. Instead, it ensures that the case is decided on its merits, with all relevant evidence considered. This approach aligns with the principles of natural justice, especially the rule of *audi alteram partem* (no one should be condemned unheard).

8. As a consequence the impugned order dated 16.08.2023 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Ludhiana is set aside and the case is remanded back to the trial Court for adjudicating it afresh on merits as per law.

9. Petition stands allowed in the aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

13.05.2025

Meenu

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*