

PUNJAB STATE WAREHOUSING CORPORATION
FARIDKOT

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v.

M/S SH. DURGA JI TRADERS & ORS.
(Criminal Appeal No. 2226 of 2011)

NOVEMBER 28, 2011

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[D. K. JAIN AND ANIL R. DAVE, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

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s.482 –Petition seeking to quash the order of Chief Judicial Magistrate dismissing the criminal complaint for default – Dismissed on the ground of alternative remedy – Held: Availability of an alternative remedy of filing an appeal is not an absolute bar in entertaining a petition u/s 482 – One of the circumstances envisaged in the section for exercise of jurisdiction by High Court is to secure the ends of justice – Trial court had dismissed the complaint on a technical ground and, therefore, interest of justice required the High Court to exercise its jurisdiction to set aside such an order so that the trial court could proceed with the trial on merits – Rejection of petition u/s 482 rather resulted in miscarriage of justice – Orders of High Court and the Magistrate are set aside and the complaint is restored to the file of the Chief Judicial Magistrate – Administration of criminal justice.

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Personal appearance of complainant – Exemption granted – Complaint dismissed by trial court for default – Held: Trial court erred in holding that since the complainant had been appearing in person despite the order exempting him from personal appearance the said exemption order become redundant and the complainant should have sought a fresh exemption from personal appearance – Order of exemption from personal appearance continues to be in force till it is revoked or recalled– Practice and Procedure.

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A *SUMMONS/PROCESS – Service of summons – Held: Since the respondents refused to accept the summons, they would be deemed to have been served -- Practice and procedure.*

B *Jeffrey J. Diermeier & Anr. Vs. State of West Bengal & Anr. 2010 (7) SCR 128 = (2010) 6 SCC 243; and Dinesh Dutt Joshi v. State of Rajasthan 2001 (3) Suppl. SCR 465 = (2001) 8 SCC 570 – relied on*

C *Aseem Shabanli Merchant Vs. Brij Mehra & Anr. (2005) 11 SCC 412; Mohd. Azeem Vs. A. Venkatesh & Anr. (2002) 7 SCC 726; and Dhariwal Tobacco Products Ltd & Ors.. Vs. State of Maharashtra & Anr. 2008 (17) SCR 844 =(2009) 2 SCC 370 – cited.*

D **Case Law Reference:**

	(2005) 11 SCC 412	cited	para 6
	(2002) 7 SCC 726	cited	para 6
	2008 (17) SCR 844	cited	para 6
E	2010 (7) SCR 128	relied on	para 8
	2001 (3) Suppl. SCR 465	relied on	para 8

F **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2226 of 2011.**

G **From the Judgment & Order dated 18.02.2008 of the High Court of Punjab & Haryana at Chandigarh in Crl. Misc. No. 27097-M of 2006.**

H **Dr. Ashok Dhamija, A.P. Dhamija, Sarad Kumar Singhania for the Appellant.**

The following order of the Court was delivered

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ORDER

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1. Leave granted.

2. This appeal, by special leave, arises from judgment dated 18th February, 2008 rendered by a learned Single Judge of the High Court of Judicature for the States of Punjab and Haryana at Chandigarh. By the impugned judgment, the learned Single Judge has dismissed the petition preferred by the appellant under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code"), seeking quashing of orders dated 18th February 2003, by which the Criminal Complaint filed against the respondents in this appeal, for having committed offences under Sections 406 and 409 of the Indian Penal Code, 1860 (for short "IPC") had been dismissed in default by the Chief Judicial Magistrate, Muktsar; and 9th November 2005 by which the application for restoration of the said complaint was dismissed.

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3. Succinctly put, the material facts giving rise to the present appeal are as follows:

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The appellant, a statutory body, constituted under the Warehousing Corporation Act, 1962, filed a private criminal complaint under Sections 406 and 409 of the IPC against the respondents, alleging shortage of huge quantity of rice in respect of paddy entrusted to them as miller. Simultaneously, an application for exemption from personal appearance of the complainant therein, was also filed, whereon the following order was passed by the Trial Court on 16th April 1999.

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"In view of the application made by the complainant presence of complainant is exempted till further orders."

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The trial proceeded in the normal course for six years. However, on 18th February 2003 the Chief Judicial Magistrate dismissed the case for non appearance of the complainant even though

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A the pleader for the appellant was present in court. The order reads thus:

"None is present on behalf of the complainant nor any request has been received on behalf of the complainant.

B Both the accused are present on bail. In view of the absence of the complainant, complaint stands dismissed in default. Be consigned to Record Room.

Pronounced.

Sd/-

C Chief Judicial Magistrate
Muktsar

At this stage an application for restoration of the complaint has been filed on the ground that personal appearance of the complainant was already exempted vide order dated

D 16.4.99. Copy supplied to the counsel for accused. However, let the notice to the accused regarding the application be given present in the court for 24.3.03.

File be also produced on the date fixed.

E Sd/-
CJM 18.2.03"

The application for restoration of the complaint was ultimately dismissed on 9th November 2005, by the following order:

F "After considering the arguments of the parties at length, I am considered of the view that complaint was dismissed in default. Complainant was already exempted from the personal appearance on 16.4.99 and thereafter he appeared in the court in person. The orders have become redundant and the complainant had to seek afresh exemption from appearance. From the perusal of the record, it appears that complainant has never moved any fresh application for exemption nor the same was ever allowed and as such the order of dismissal dated 19.2.03

G has become final and counsel for the accused has referred the Apex Court judgments and I have gone through the

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same and find a force in the contention of the learned counsel for accused. There is no provision in Criminal Procedure Code to review the order and recall the summons. Hence, application moved by the applicant is hereby declined and accused are also discharged. File be consigned to the record room."

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4. Aggrieved thereby the appellant moved the High Court with a petition under Section 482 of the Code for setting aside of the said orders and restoration of the complaint. As aforesaid, by the impugned judgment, the High Court has dismissed the petition, holding that the dismissal in default of a private complaint amounts to acquittal of the accused, and since against such an order a specific statutory remedy exists in the Code, a petition under Section 482 of the Code cannot be entertained. Hence the present appeal by the complainant.

5. As per the office report, the respondents had refused to accept summons when the same were tendered to them by the process server. Consequently, vide order dated 18th September, 2009 the respondents were deemed to have been served. We have heard the learned counsel for the appellant.

6. Learned counsel appearing for the appellant has assailed the impugned judgment mainly on the ground that the discretion vested in the High Court under Section 482 of the Code being very wide, in the instant case the High Court grossly erred in declining to exercise its jurisdiction on the ground that an alternative remedy was available to the appellant against an order of acquittal of the accused. Relying on the decision of this Court in *Aseem Shabanli Merchant Vs. Brij Mehra & Anr.*¹, learned counsel has urged that having regard to the serious nature of the charges against the respondents, the complaint should not have been dismissed in default on account of non appearance of the complainant, who had been otherwise exempted from personal appearance, and the case ought to

1. (2005) 11 SCC 412

- A have been tried on merits. In support of his contention that dismissal of the complaint because of a singular default in appearance on the part of the complainant, was improper, learned counsel relied upon the decision of this Court in *Mohd. Azeem Vs. A. Venkatesh & Anr.*². It is also argued that having
- B regard to the nature of the case, the High Court committed a patent error in dismissing the petition under Section 482 of the Code on the ground of availability of an alternative remedy. In support of the proposition that availability of an alternative remedy *per se* is no ground for dismissal of an application
- C under Section 482 of the Code, learned counsel commends us to the decision of this Court in *Dhariwal Tobacco Products Ltd & Ors. Vs. State of Maharashtra & Anr.*³.

- 7. The short question that falls for consideration is whether in the fact-situation the High Court was justified in declining to
- D exercise its jurisdiction under Section 482 of the Code?

- 8. It is trite law that the inherent power of the High Court ought to be exercised to prevent miscarriage of justice or to prevent the abuse of the process of the Court or to otherwise
- E secure the ends of justice. The Court possesses wide discretionary powers under the Section to secure these ends. In this behalf it would be profitable to refer to the decision of this Court in *Jeffrey J. Diermeier & Anr. Vs. State of West Bengal & Anr.*⁴, wherein one of us (D.K.Jain, J.), speaking for
- F the bench, explained the scope and ambit of inherent powers of the High Court under Section 482 of the Code as follows:

“20..... The Section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of Court; and (iii) to otherwise secure the

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- 2. (2002) 11 SCC 412.
- 3. (2009) 2 SCC 370.
- H 4. (2010) 6 SCC 243.

ends of justice. Nevertheless, it is neither possible nor A
desirable to lay down any inflexible rule which would govern
the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court B
under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex C
debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice.

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22. In *Dinesh Dutt Joshi v. State of Rajasthan* [(2001) 8 D
SCC 570], while dealing with the inherent powers of the High Court, this Court has observed thus (SCC p. 573, para 6):

"6. ...The principle embodied in the section is based upon the maxim: *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

9. Bearing in mind the afore-stated legal position in regard to the scope and width of the power of the High Court under H

- A Section 482 of the Code, we are of the opinion that the impugned decision is clearly indefensible. As noted above, the High Court has rejected the petition under Section 482 of the Code on the ground of availability of an alternative remedy without considering the seriousness of the nature of the offences and the fact that the Trial Court had dismissed the complaint on a hyper technical ground viz. since the complainant had been appearing in person, despite order dated 16th April 1999, exempting him from personal appearance, the said exemption order became redundant and the complainant should have sought a fresh exemption from personal appearance. We feel that such a view defies any logic. An order of exemption from personal appearance continues to be in force till it is revoked or recalled. We are convinced that in the instant case, rejection of appellant's petition under Section 482 of the Code has resulted in miscarriage of justice.
- B Availability of an alternative remedy of filing an appeal is not an absolute bar in entertaining a petition under Section 482 of the Code. As aforesaid, one of the circumstances envisaged in the said Section, for exercise of jurisdiction by the High Court is to secure the ends of justice. Undoubtedly, the Trial Court had dismissed the complaint on a technical ground and therefore, interests of justice required the High Court to exercise its jurisdiction to set aside such an order so that the Trial Court could proceed with the trial on merits.
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- F 10. Resultantly, the appeal is allowed. The impugned judgment as also the orders of the Chief Judicial Magistrate dated 18th February 2003 and 9th November 2005 are set aside and the complaint filed by the appellant is restored to the file of the Chief Judicial Magistrate. The Chief Judicial Magistrate shall now proceed with the trial after securing the presence of the accused.
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R.P.

Appeal allowed.

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