

M.Cr.C.No.2592/2015
(Shyam Mohan Shivhare v. Bhagwanlal Koli & Ano.)

23.06.2016

Shri A.K. Jain, counsel for the applicant.

Shri Hari Singh Chouhan, counsel for the respondents No.1 & 2.

The applicant has preferred the present restoration petition under Section 482 of CrPC for restoration of M.Cr.C.No.1750/2010, which was dismissed on 11.08.2014 in want of prosecution.

After considering the submissions made by learned counsel for the parties, it would be apparent that the applicant had filed Misc. Criminal Petition under Section 482 of CrPC in the year 2010. On 19.3.2010, the Single Bench has directed to call for the case diary and learned counsel for the applicant didn't inform the Court that it was a complaint case. Again on 06.03.2014, it was directed that notice be issued to the respondents on furnishing the process fee. No process fee was furnished. On 11.08.2014, none appeared for the applicant and, therefore, the matter was dismissed in want of prosecution. Though, there is no time limit for filing the petition under Section 482 of CrPC for restoration but it should be moved within a reasonable time. The previous petition was dismissed in want of prosecution on 11.08.2014 and thereafter the applicant could move it on 18.3.2015 i.e. approximately after seven months. No reason has been shown about the delay. The conduct of the applicant clearly indicates that he didn't try to contact

M.Cr.C.No.2592/2015
(Shyam Mohan Shivhare v. Bhagwanlal Koli & Ano.)

his advocate. When the matter is proceeded before any court, the litigant should remain in contact with his advocate. Non-appearance on 11.8.2014 of the learned counsel for the applicant clearly indicates that he had no instructions and therefore he didn't appear on that particular day. No specific reason has been given as to why the restoration petition is filed after seven months of the dismissal of the case.

If the learned counsel for the applicant did not appear before the court on 11.8.2014 due to his busyness in other case then he would have certainly knew about the dismissal of the petition and the application for restoration must have been filed within one or two months after dismissal of the previous petition. Hence, it is not a case of mistake of an advocate but it is a case where the applicant didn't take any interest in prosecuting the petition. Under these circumstances, prima-facie, there is no reason to restore the previous petition M.Cr.C.No.1750/2010. No satisfactory ground could be established by the learned counsel for the applicant for restoration of the previous petition.

If previous petition is restored then the applicant had filed the petition against the order dated 23.10.2009 relating to framing of the charges. Against that order, a criminal revision lies because it is an order of final nature whereas since it was filed with delay of five months therefore the petition under section 482 of CrPC was filed and therefore he tried

M.Cr.C.No.2592/2015
(Shyam Mohan Shivhare v. Bhagwanlal Koli & Ano.)

to avoid to give any explanation for delay in filing the petition under Section 482 of CrPC in M.Cr.C.No.1750/2010. However, the petition under Section 482 of CrPC filed by the applicant against the order relating to framing of charges was not maintainable.

Also, it was the grievance of the applicant that vide order dated 23.10.2009 the trial court didn't frame the charge of offence under Section 420 of IPC against any of the applicants. However, it was a complaint case of warrant trial and, therefore, registration of complaint was directed by the trial court vide order dated 25.8.2006 on the basis of evidence under Sections 200 & 202 of CrPC, whereas, charges were to be framed on the basis of evidence adduced by the complainant before framing of the charges. If pleadings of the complaint are perused then there is no allegation against the respondent No.3 Babulal that he cheated the complainant in any manner and, therefore, the trial court has rightly not framed any charge of under Section 420 of IPC against the respondent No.3-Babulal. According to the pleadings of the complainant, it was not mentioned that any movable property was indulged in cheating done by the respondents No.1 & 2 while committing the offence of cheating and, therefore, the trial court has framed the charge under Section 417 of IPC against the respondents No.1 & 2 instead of Section 420 of IPC and, therefore, no mistake has

M.Cr.C.No.2592/2015
(Shyam Mohan Shivhare v. Bhagwanlal Koli & Ano.)

been committed by the trial court while framing the charges. Hence, if M.Cr.C. No.1750/2010 is restored then it will not succeed, that will be a futile exercise to restore the petition and thereafter to dismiss it.

Under these circumstances, there is no reason to restore M.Cr.C.No.1750/2010. Consequently, the present petition filed by the applicant **Shyam Mohan Shivhare** is hereby dismissed at motion stage.

(N.K. Gupta)
Judge

(ra)