

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR**

...

CRM (M) No.97/2022

*Pronounced on: 04.07.2024*

Mehraj ud din Andrabi, age 40 years S/o Ghulam Mohammad Andrabi R/o  
Katch Razgeer Khan Sahib, Budgam

.....Petitioner(s)

Through: Mr Parvaiz Nazir, Advocate

**Versus**

Zia Darakshan D/o Abdul Rehman Chibbu R/o Wanabal, Sherpora Road,  
Rawalpora, Srinagar

.....Respondent(s)

Through: Mr Gulzar Ahmad Advocate

**CORAM:**

**HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE**

**JUDGEMENT**

1. Quashment of Order dated 11<sup>th</sup> December 2019, passed by Sub Judge/  
Forest Magistrate, Srinagar, hereinafter for short referred to as "*Trial  
Court*", in an application for restoration of complaint titled as *Zia  
Darakshan v. Mehrajudin Andrabi*, is sought for on the grounds made  
mention of in instant petition. Praying also that the Trial Court Order dated  
28<sup>th</sup> September 2018, dismissing the complaint and acquitting petitioner of  
charges levelled against him, may be upheld.
2. I have heard learned counsel for parties and considered the matter.
3. Perusal of the record on the file would reveal that respondent herein had  
filed a complaint under Section 138 of the Negotiable Instrument Act,  
before the Trial Court. An order dated 6<sup>th</sup> March 2017, passed by the Trial

Court taking cognizance and issuing process against petitioner, was challenged by petitioner in a revision petition before Additional Sessions Judge, Srinagar. The said revision petition, however, vide judgement dated 24<sup>th</sup> July 2018 was dismissed, holding that Trial Court order did not suffer from any illegality or impropriety. The matter was remanded back to Trial Court for disposal. As record would tend to show, respondent/complainant did not cause his appearance, which resulted in dismissal of the complaint by Trial Court order dated 28<sup>th</sup> September 2018. Respondent/complainant made an application for restoration of complaint dismissed vide order dated 28<sup>th</sup> September 2018. The Trial Court, by impugned order, restored the complaint to its original number.

4. According to counsel for petitioner, impugned order is abuse of process of court and law. The Trial Court under the Code of Criminal Procedure lacks jurisdiction to review its order and restore the complaint. It is also stated by counsel for petitioner that Code of Criminal Procedure does not contain any provision to confer an inherent jurisdiction on the Trial Court to review/recall its orders passed by it and restore the criminal proceedings/complaint.
5. It may be mentioned here that dismissal of complaint for non-appearance of complainant, or discharge or acquittal of accused on the same ground is a final order, and in absence of any specific provision in the Code of Criminal Procedure, a Magistrate cannot exercise any inherent jurisdiction.
6. The Code of Criminal Procedure does not confer any power to review/recall an order. The only situation, in which a court may legitimately alter its order is, where it proposes to correct clerical and/or arithmetical errors. A complaint, once dismissed for failure of complainant to put in appearance, cannot be restored. The question, whether Magistrate was

empowered to dismiss a complaint in default for non-appearance, is a matter apart and can be legitimately agitated in appropriate proceedings. In that view of matter, it is apparent that the Trial Court had no jurisdiction to pass the order impugned and as a corollary thereof it requires to be set-aside. Reference in this regard is worthwhile to be placed on *Maj. Genl. A.S.Gauraya and another v. S.N.Thankur and another, AIR 1986 SC 1440.*

7. In the above backdrop, it would be appropriate to say that provisions of Section 482 of the Code of Criminal Procedure (Cr.P.C.) provide for inherent powers to the High Court, which is noticed as under:

“482. 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.”

8. Exercise of powers under Section 482 Cr.P.C., thus, envisage three circumstances in which 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 ends of justice.
9. For the reasons discussed above, the order dated 11<sup>th</sup> December 2019, passed by Sub Judge/Forest Magistrate, Srinagar, is **set-aside**. It is, however, made clear that if respondent has any grievance against petitioner as had been agitated by him in the complaint dismissed by the Trial Court vide order dated 28<sup>th</sup> September 2018, he shall be at liberty to avail appropriate remedy as may be available to him under law.
10. **Disposed of.**

(Vinod Chatterji Koul)  
Judge

**Srinagar**  
04.07.2024  
Ajaz Ahmad, Secy

*Whether approved for approval? Yes/No*