

APPLICATION FOR RECALL/RESTORATION OF COMPLAINT

Present: Sh. Manjit Kaushik, Advocate for complainant.

ORDER:

Vide this order, the Court shall decide the application moved on behalf of the complainant for recall/restoration of complaint No. NACT/87029/2023 that was “dismissed in default” vide order dated 13.03.2026 by this Court and set aside the aforesaid order.

2. As per the averments made in the application, the applicant/complainant has submitted that the present complaint was dismissed for non-prosecution/default vide order dated 13.03.2026. It has been averred that the complainant/counsel had marked his presence before the Reader of the Court and had also informed that the notice had been duly served upon the accused at the address furnished in the complaint. It has further been stated that the postal receipt/proof of dispatch pertaining to the copy of order dated 21.02.2025 has been annexed with the application. It has been further averred that the complainant had been diligently pursuing the present proceedings and had no intention to abandon or withdraw the complaint. According to the applicant, the complaint raises a genuine and substantial grievance against the accused and involves valuable legal rights of the complainant. It has been submitted that failure to restore the complaint would result in irreparable loss and prejudice to the complainant. The applicant has also undertaken to appear before the Court on every date of hearing and to comply with all directions and orders passed by the Court. It has been pleaded that the application has been

filed bona fide and in the interest of justice and that no prejudice would be caused to the accused if the complaint is restored, whereas the complainant would suffer grave prejudice and irreparable loss if the complaint is not restored. It has lastly been contended that proceedings ought ordinarily to be adjudicated on merits rather than being terminated on account of an inadvertent or bona fide absence, particularly when sufficient cause for such absence is shown. On these grounds, the applicant has prayed for restoration of the complaint in the interest of justice.

3. I have heard the learned counsel for the applicant/complainant and carefully perused the application and the challenged order. The application seeks recall and restoration of complaint No. NACT/87029/2023 which stood dismissed for want of prosecution vide order dated 13.03.2026 due to the complainant having failed to provide the fresh address of the accused.

4. At the outset, it is necessary to examine whether this Court possesses the jurisdiction and power to recall or restore a criminal complaint once it has been dismissed for want of prosecution. The Code of Criminal Procedure does not confer any inherent power upon a Magistrate to review, recall or set aside its own final order. Unlike the High Courts, which are vested with inherent powers under Section 482 Cr.P.C., no such power is available to a criminal court of original jurisdiction.

5. The Hon'ble Supreme Court in ***Major General A.S. Gauraya v. S.N. Thakur***, (1986) 2 SCC 709, has categorically held that a Magistrate has no power to recall or restore a complaint once it has been dismissed for default and that upon passing such an order, the Magistrate becomes functus officio.

6. In the present case, the complaint was dismissed for want of prosecution, and not merely dismissed in default, vide a judicial order dated 13.03.2026. Upon passing of the said order, this Court became functus officio and ceased to have jurisdiction over the complaint. The effect of the said judicial order cannot be circumvented by seeking its recall under the guise of an application for restoration.

7. The reasons now sought to be advanced by the complainant, namely, that he was present and had marked his appearance and that notice had already been duly served upon the accused, do not advance his case. Such aspects, if borne out from the record, were matters which could and ought to have been brought to the notice of the Court at the time when the complaint was taken up and the order dated 13.03.2026 was passed. Likewise, the inability of the complainant to furnish a fresh/correct address of the accused for securing his presence was a circumstance which was available for consideration by the Court while passing the said order. The judicial order dated 13.03.2026 having been passed after consideration of the circumstances then obtaining, the complainant cannot seek to reopen the matter merely by reiterating pleas which were either available for consideration or were duly taken note of at the relevant stage.

8. The subsequent assertion of the complainant that he had been diligently pursuing the proceedings or that he had no intention to abandon the complaint cannot, by itself, confer jurisdiction upon this Court where none exists in law. A court cannot assume jurisdiction merely on the basis of equitable considerations or the alleged prejudice that may be caused to a party.

Equity cannot override a statutory bar, nor can considerations of substantial justice confer upon a court a power of recall which is otherwise not vested in it by law.

9. Accordingly, once the complaint stood terminated by virtue of the judicial order dated 13.03.2026, this Court cannot, in exercise of an inherent or equitable jurisdiction, recall the said order and revive the complaint in the absence of a statutory provision conferring such power.

10. It is a settled principle that where the law does not provide a remedy before a particular forum, the same cannot be created by invoking “interest of justice”. The proper remedy available to the complainant, if any, lies before the competent superior court in accordance with law, or by instituting a fresh complaint if otherwise permissible.

11. In view of the settled legal position and the absence of any statutory provision empowering this Court to recall or restore a complaint dismissed for want of prosecution, the present application is not maintainable and deserves to be dismissed. **CRM/64350/2026 stands disposed of accordingly.** Papers be tagged with main file. File be consigned to record room after due compliance.

Announced in Open Court :
Dated : 11.08.2026

(Anshuman)
Judicial Magistrate First Class,
Gurugram. (UID: HR0545)