

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Appeal No. AS-130 of 2015
Date of decision : 05.10.2015**

Nirmal Singh

..... Appellant

versus

Dawarka Nath Sharma

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. G.S. Sirphikhi, Advocate
for appellant.**

ANITA CHAUDHRY, J.

Crl. Misc. No. 14166 of 2015

There is a delay of 460 days in filing the appeal. Learned counsel had contended that after the dismissal of complaint on 14.01.2014, the applicant had filed an application for recall of the order, but it was dismissed on 09.02.2015 being not maintainable and that was the reason for the delay.

Notice of the application was sent. It was received back with the report of refusal.

For the reasons mentioned in the application, the delay stands condoned.

Main Case

Heard.

Leave granted. Registry has assigned the number to the same.

In this appeal, challenge has been laid to the order

dated 14.01.2014 whereby the complaint filed by the appellant under Section 138 of Negotiable Instruments Act has been dismissed for non-appearance.

Learned counsel for the appellant contends that the absence of the complainant was not intentional. He further contends that the order was passed on 27.11.2013 and the accused was summoned for 13.12.2013. On that date the summons issued to the accused were not received back and fresh summons were issued for 14.01.2014, on which date the complaint was dismissed for non-prosecution. According to him, the complainant had been appearing on each and every date of hearing and it was a single default that too on account of wrong noting of date and that the case was fixed for procuring the presence of the accused and presence of the petitioner was not necessary.

On the date when the case was dismissed, it was fixed for presence of accused. The presence of the complainant was not necessary. A very hyper-technical and pedantic approach had been adopted by the Court below by dismissing the complaint only for a single default. The complainant was diligently pursuing his remedies. He has given an explanation. There was no reason why the complainant would stop pursuing his case. It is a complaint involving dishonour of cheque. It is always in the interest of justice that the case should be adjudicated on merits.

In Mohd. Azeem Vs. A. Venkatesh & Anr., 2002(7) SCC 726,
the Hon'ble Apex Court had held that the complaint ought not to

have been dismissed by the Court on account of single default on the part of the complainant. The order passed by the court below seems to be harsh, especially when the case was only fixed for presence of accused.

The instant appeal is allowed and the order dated 14.01.2014 passed by the learned Magistrate dismissing the complaint of the appellant in default, is set aside subject to the condition that there shall be no further default on the part of the complainant. The matter is remitted back to the trial court with a direction to restore the complaint to its original number and then to further proceed with the case from the stage, where it was dismissed. The complainant, through its counsel, is directed to appear in the trial Court on 15.10.2015.

October 05, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE