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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-AS-143-2015

Date of Decision : October 12th, 2015

Harwinder Kaur

.... Appellant

Versus

Kesar Singh

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr.Satnam Singh Gill, Advocate,
for the appellant.

Mr. K.C.Singla, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present appeal is against order dated 3.11.2014 passed by Judicial Magistrate Ist Class, Patiala whereby complaint under Section 138 of the Negotiable Instruments Act, 1881 [for short, 'the Act'] was dismissed on account of non-appearance of the complainant or her counsel.

Learned counsel for the appellant submitted that the complainant-appellant had filed a complaint No.1169 under Section 138 of the Act on account of dishonour of cheque No.903937 dated 6.3.2012 for a sum of Rs.17.70 lacs in favour of the present appellant with the assurance that the same would be encashed on presentation. The same was dishonoured. Complaint under Section 138 of the Act was filed and respondent was summoned by the trial Court. On the date fixed, i.e.,

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3.11.2014, the complaint was dismissed on account of non-appearance of the complainant before the trial Court because the complainant was not in a position to attend the court hearing as she was carrying the last stage of pregnancy and medical prescription is Annexure P/2 on the file.

Learned Counsel for the appellant further submitted that the order passed by the trial Court is against the principles of natural justice as the circumstances were beyond her control to attend the court proceedings on the date fixed i.e. 3.11.2014. He has prayed that the complaint be restored to its original number.

Learned counsel for the respondent submitted that on the date fixed, if at all the complainant was not well, there was no reason for not filing of an application seeking exemption from the Court and there was no reason for non-appearance of counsel for the complainant on the date fixed before the Court below. The order passed by learned Magistrate is perfectly in accordance with law and present appeal deserves dismissal.

Having considered the fact that the complaint was filed by the complainant on 22.9.2012 and thereafter the appellant-complainant was continuously pursuing the matter, there was no reason or motive for her not to put in appearance in the court on the date fixed except the grounds taken in this appeal which are supported by medical evidence. In such like cases of single default, the complaint should not be dismissed, rather notice should have been issued to the complainant instead of dismissing the complaint. Such a view was taken by this Court in **Purushotam Mantri Vs. Vinod Tandon alias Hari Nath Tandon, 2009 (1) R.C.R. [Criminal] 442.**

In view of the above, the order dated 3.11.2014 is set-aside and

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the complaint is ordered to be restored to its original number. The trial Court is directed to proceed further in the matter, in accordance with law.

(SHEKHER DHAWAN)
JUDGE

October 12th, 2015
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