

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

**Crl. Appeal No. AS-51 of 2015
Date of decision : 26.03.2015**

Rishi Raj

..... Appellant

versus

Munsi Khan Mew

... Respondent

CORAM:- HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

**Argued by:- Mr. B.K. Bagri, Advocate
for appellant.**

ANITA CHAUDHRY, J.

Heard.

Delay condoned.

Leave granted. Registry to number the same.

The respondent-accused has not appeared in the original complaint, therefore, In this appeal, challenge has been laid to the order dated 28.10.2014 whereby the Judicial Magistrate Ist Class, Rewari dismissed the complaint filed by the appellant under Section 138 of Negotiable Instruments Act due to non-appearance of the complainant-appellant.

It has been contended by learned counsel for the appellant that the absence of the complainant was not intentional. He further contends that the complainant had been appearing on each and every date of hearing and it was the

single default. According to learned counsel, the case was fixed for procuring the presence of the accused by issuing non-bailable warrants and instead of dismissing the same, steps were to be taken by the Court to ensure the presence of the accused.

It appears from the paper-book that on the date when the case was dismissed for non-prosecution, it was fixed for presence of accused and non-bailable warrant had been issued to procure his presence. The perusal of record reveals that the complainant had been appearing before the Court on each date of hearing. On 12.09.2014 the presence of complainant was exempted and it was adjourned to 28.10.2014, on which date the complaint was dismissed. A very hyper-technical and pedantic approach had been adopted by the Court below by dismissing the complaint for a single default of the complainant. No benefit would have accrued to the complainant for not appearing in the Court. It is the complaint involving dishonour of cheque. It is always in the interest of justice that the matter should be adjudicated on merits. In the case of **Mohd. Azeem Vs. A. Venkatesh & Anr., 2002(7) SCC 726**, the Hon'ble Apex Court 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 28.10.2014 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 30.04.2015.

March 26, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE