

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

**Crl. Appeal No. AS-63 of 2015
Date of decision : 23.07.2015**

Tarlochan Singh

..... Appellant

versus

M/s Shanti Forgings & Anr.

... Respondents

CORAM:- HON'BLE MRS. 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

**Present:- Mr. R.S. Bajaj, Advocate
for appellant.**

None for the respondent.

ANITA CHAUDHRY, J.

Delay condoned.

Heard.

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

In this appeal, challenge has been laid to the order dated 04.02.2013 whereby the Magistrate has dismissed the complaint filed by the appellant under Section 138 of Negotiable Instruments Act due to his non-appearance.

Notice was given to the respondents. On the last date of hearing, it was reported that respondent had fled on seeing the process server. The matter was adjourned for today

to enable the counsel to inform the stage at which the complaint was dismissed. It has been told that when the complaint was dismissed, it was fixed for consideration on notice of accusation.

It has been contended by learned counsel for the appellant that the absence of the complainant was not intentional but on account of wrong noting of the date and it was only single default of the complainant.

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 case was fixed for consideration on notice of accusation and instead of adopting a very hyper-technical and pedantic approach to dismiss the complaint, the Court below ought to have proceeded with the case. It is the complaint involving dishonour of cheque. It is always in the interest of justice that the matter should be adjudicated on merits. The order passed by the court below seems to be harsh.

The instant appeal is allowed and the order dated 04.02.2013 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 from the stage, when it was dismissed. The complainant, through his counsel, is directed to appear in the trial Court on 03.08.2015.

July 23, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE