

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CRM-A-1101-MA of 2013

Date of Decision: 06.10.2015

Pardeep KumarApplicant

Versus

RajeevRespondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Abhinav Sood, Advocate
for the applicant.

Mr. Chiranji Lal, Advocate
for the respondent.

DAYA CHAUDHARY, J.

The present application has been filed to challenge the impugned order dated 07.11.2013 passed by the Chief Judicial Magistrate, Kaithal, whereby, complaint case No.1912 dated 16.01.2012 filed by the applicant-complainant under Section 138 of the Negotiable Instruments Act has been dismissed for want of prosecution.

Briefly the facts of the case, as made out in the petition, are that the applicant filed the said complaint under Section 138 of the Negotiable Instruments Act against the respondent as he issued a cheque No.414703 dated 08.07.2000 for an amount of ₹ 24 lacs out of his saving bank account in H.D.F.C Bank at Kaithal in favour of the petitioner on

account of discharging his legal liability. The said cheque was submitted in the bank but the same was received back vide memo dated 23.11.2011 on the ground that the account was closed. Thereafter, the petitioner served a notice to the respondent on 07.12.2011 but no payment was released to him and hence, he filed a complaint under Section 138 of the Negotiable Instruments Act, wherein, notice was issued to the respondent. The complaint was dismissed in default on 07.11.2013 on account of non-appearance of the parties.

Learned counsel for the applicant submits that the applicant could not appear in the Court as he has wrongly noted down the date in the case as 11.11.2013 in stead of 07.11.2013. Thereafter, he came to know that the case had already been dismissed in default on 07.11.2013. Learned counsel also submits that the non-appearance of the applicant is on account of noting down the wrong date and if the said order dated 07.11.2013 is not set aside, the applicant would suffer great irreparable loss. He further submits that while dismissing the complaint, the notice could have been issued but that was not done by the trial Court. He further submits that due to impugned order passed by the trial Court, the accused-respondent has been acquitted of the charge.

Learned counsel for the applicant has relied upon the judgments of this Court in cases ***Ant Ram vs State of Haryana and another*** passed in ***CRM-A-1755-MA of 2014***, decided on ***20.07.2015***, ***Harjit Singh vs Isham Singh*** passed in ***Crl. Misc. A. No.788-MA of 2012*** decided on ***07.10.2013***, judgment of Delhi High Court in case ***Escorts Limited vs Prakash Chand Patidar*** passed in ***Crl. A. No.1265 of 2013*** decided on ***21.05.2014*** as well as judgment of Allahabad High Court in case ***Aruroday Kumar Vishwakarma vs State of U.P and another 2009***

(1) BC 574.

Learned counsel for the respondent opposes the submissions made by learned counsel for the applicant.

Heard the arguments of learned counsel for the parties and have also perused the *zimini* orders.

The issue in the present case is also the same as was raised in the judgments of Hon'ble the Apex Court in ***Ram Abhilakh v. State of U.P., I(2007) CCR 380 (SC) : II (2007) SLT 226: I(2007) DMC 431 (SC): (2007)2 SCC (Crl.) 54, Ashok Manikchand Chankeshwara and others v. H.R. Barge and another, II (2007) CCR 226(SC): IV (2007) SLT 423: (2007)I SCC (Crl.) 652 and Madan Lal Kapoor v. Rajiv Thapar and others, IX(2007) SLT 679: IV(2007) CCR 423(SC): (2007) 3 SCC (Crl.) 437.***

In all the aforecited judgments, it has been held that criminal appeal should not have been dismissed in default but despite issuance of notice to the appellant, if neither the Counsel nor the appellant is present, the Court should have decided the appeal on merits and even in case, the appellant is in jail, the Court can appoint a lawyer on state expenses, but that was not done in the present case.

The petitioner could not appear as he had noted down the wrong date, otherwise also, there was no reason to remain absent as the petitioner was not going to get any benefit out of that. Moreover, there is every possibility of foreclosing the rights of the complainant, in case further remedies are found to be barred by limitation. It cannot be presumed that after filing the complaint and by appearing on various dates, the petitioner would commit such mistake by not appearing before the trial Court. It would be harsh to the petitioner to nonsuit him merely for his non-appearance on one date.

Keeping in view the facts and law position as discussed above,

the present petition is allowed and the impugned order dated 07.11.2013 passed by the Chief Judicial Magistrate, Kaithal is set aside and one more opportunity is granted to the petitioner to lead evidence in the complaint subject to payment of costs of ₹ 10,000/- to be deposited with the trial Court.

06.10.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE