

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

**Crl. Appeal No. AS-116 of 2015
Date of decision : 28.09.2015**

Udaivir

... Appellant

versus

Sanjay Saini

... Respondent

CORAM:- HON'BLE MS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. Ram Bilas Gupta, Advocate
for appellant.**

ANITA CHAUDHRY, J.

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

In this appeal, challenge has been laid to the order dated 06.10.2014 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, but due to wrong noting of date. He further contends that 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.

Learned counsel has placed on record zimni orders showing that on 11.07.2014 it was stated by both the parties that there are chances of compromise and the case was adjourned to 18.08.2014, which was declared holiday and the case was adjourned to 08.09.2014. On that date, on request of accused, the matter was adjourned to 06.10.2014 for payment.

The perusal of order dated 06.10.2014 reveal that none had appeared on behalf of the accused. Instead of procuring the presence of parties, 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 06.10.2014 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 12.10.2015.

September 28, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE