

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. A-268-MA of 2014
Date of Decision: 02.2.2015.

Satish Kumar

.....Applicant

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Bhupender Singh, Advocate
for the applicant.

SABINA, J.

Applicant had filed complaint against respondent No. 2 under Section 138 of the Negotiable Instruments Act, 1881 qua dishonour of cheque dated 25.8.2008 in the sum of ₹ 50,000/-. Complaint filed by the applicant was dismissed in default vide order dated 1.11.2013. Hence, the present application under Section 378(4) of the Code of Criminal Procedure, 1973 praying for leave to appeal by the applicant-complainant.

Learned counsel for the applicant has submitted that the applicant could not appear before the Trial Court on 1.11.2013 as he had noted down a wrong date. In support of his argument, learned counsel has placed reliance on '**Ashwani Kumar versus M/s Mehar Flour and Saw Mills, 2013(1) Law Herald (Punjab and Haryana), 487.**

Impugned order dated 1.11.2013 reads as under:-

*“Present: None for the complainant.
Accused on bail with counsel Sh. Gulzar Singh.*

Today case was fixed for after charge evidence of the complainant. No CW is present. Case called several times since morning but none has appeared on behalf of the complainant. It is now 12.45 P.M. Let file be put up after lunch break.

*Pronounced in the open court. (Pardeep Choudhary)
Dated: 1.11.2013 Judl. Magistrate Ist Class
Karnal*

Present: None for the complainant.

*Accused on bail with counsel Sh. Gulzar Singh.
File taken up after lunch. Case again called several times but none has appeared on behalf of the complainant. It is already 4.00 P.M. Court time is over. No more wait is justified. As such, from the above circumstances and from the perusal of the case file, it is revealed the parties to the present complainant is no more interested in pursuing the present complaint and accordingly, the present complaint is dismissed in default for non appearance of the complainant. Accordingly, the accused is exonerated of the notice of accusation u/s 138 of Negotiable Instrument Act. His bail and surety bonds stand discharged. File be consigned to the record room after due compliance.*

*Pronounced in the open court. (Pardeep Choudhary)
Dated: 1.11.2013 Judl. Magistrate Ist Class
Karnal “*

Thus, it is evident that the case was listed for evidence of the applicant but none had appeared on behalf of the applicant on 1.11.2013 before the Trial Court. Respondent No. 2 was present along with his counsel. Since the presence of the applicant was necessary on the date fixed before the Trial Court, the Trial Court

left with no other option, dismissed the complaint filed by the applicant in default.

I have gone through the judgment relied upon by the learned counsel for the applicant. However, the same fails to advance the case of the applicant as it is based on the different facts.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

**February 02, 2015
Gurpreet**