

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

**CRM-A-637-MA-2015
Decided on : 28.05.2015**

Rakesh Kumar

... Appellant

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MS. JUSTICE NAVITA SINGH

Present : Mr. Hemraj Kapil, Advocate
for the appellant.

NAVITA SINGH, J. (Oral)

The request of the appellant under Section 378 (4) Cr.P.C., is allowed.

The present appeal is filed against the order dated 27.01.2015 on which date the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act was dismissed, as no one had appeared for the complainant before the trial Court.

Counsel for the appellant submits that on 05.12.2014 the accused i.e. the respondent No.2 herein, had not appeared before the Court below and counsel for the complainant/appellant also noted the date as 28.01.2015 instead of 27.01.2015. Copy of the relevant page from the diary of the counsel shows that on 05.12.2014 an entry was made regarding the complaint fixed for 28.01.2015 and entry was accordingly made in the diary for that date.

At the time of arguments, counsel for the appellant also showed the brief of Mr. Ashok Kumar Singla, Advocate, who was the

counsel for the appellant/complainant in the trial Court. On the brief the date of the filing of the complaint is noted as 29.11.2014 and it was marked for 05.12.2014 to the Court of the Magistrate. On 05.12.2014 the date was noted as 28.01.2015 for appearance.

An application was filed before the Court below. It is submitted that the other dates on the brief are regarding the application for restoration, but that application was meaning-less, as Court had no power in that regard.

Since, it appears that it is a case of some kind of miscommunication and if date having been noted wrongly, it is felt that the complainant should not suffer because he or his counsel could not appear on 27.01.2015, which was not the date noted by them. Complaint should be heard on merits.

Appellant/complainant shall appear before the trial Court on 16.07.2015, thereafter the trial Court shall proceed further in accordance with law.

In view of above, the present appeal stands disposed of.

May 28, 2015

Naveen

**(NAVITA SINGH)
JUDGE**