

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

CRM-M No. 25013 of 2012 (O&M)
Date of Decision: 24.02.2015

Ramesh Kumar

..... Petitioner

Versus

Suresh Kumar

.... Respondent

CORAM: HON'BLE MR. JUSTICE K.C. PURI.

Present: Mr. Parminder Singh, Advocate,
 for the petitioner.

None for respondent.

K.C. PURI, J. (ORAL)

Challenge in this petition is to the order dated 15.02.2012 and order dated 11.06.2012, passed by Shri Vivek Goyal, Judicial Magistrate, 1st Class, Karnal, vide which the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act and application for restoration of the complaint were dismissed respectively.

Briefly stated, complainant-Ramesh Kumar, now petitioner, filed complaint under Section 138 of the Negotiable Instruments Act alleging that Suresh Kumar issued cheque dated 10.10.2009 for a consideration of Rs. 1,50,000/-. The said amount was borrowed and was to be paid after one month alongwith interest. The said cheque was presented on 16.01.2010 and the same was dishonoured with the report that “**INSUFFICIENT FUNDS AND SIGNATURE DIFFERS.**” Legal notice was issued on 23.01.2010 but amount had not been paid. Hence, this complaint.

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On 15.02.2012, the complaint was dismissed in default as none had appeared on behalf of the complainant and then, petitioner had filed an application for restoration of the complaint, but that application was also dismissed vide order dated 11.06.2012 holding that Court has no power to review its own order.

Now, the petitioner has filed the present petition. Notice of the petition was given to the respondent on 20.05.2014 and the report was received that "petitioner is avoiding the service and notice was affixed at the home address". However, it was again ordered that respondent be summoned in accordance with Section 64 of Cr.P.C. for 22.09.2014. The respondent, thereafter, served through his sister, but none had appeared. So, this is a valid service in accordance with Section 64 of the Cr.P.C.

The petitioner has been non-suited on the ground that he had not appeared. Respondent was not served even on that day. It is settled law that nobody should be condemned unheard.

So, in these circumstances, the above said impugned orders stands set aside and the case is remanded back to the trial Court for fresh decision. The petitioner is directed to appear through counsel on 30.03.2015 before the trial Court.

Disposed of accordingly.

February 24, 2015

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**(K.C. PURI)
JUDGE**