

217.

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

CRM-A-420-MA-2016

Date of decision:20.09.2016

Dharam Pal

... Applicant-Appellant

versus

Sukhdev Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Sachin Gupta, Advocate,
for the applicant-appellant.

None for the respondent.

HARI PAL VERMA, J.(Oral)

The application has been moved under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against the order dated 14.01.2016 passed by learned Judicial Magistrate, Ist Class, Kurukshetra whereby the complaint under Section 138 of Negotiable Instruments Act, 1881 has been dismissed in default.

I have heard learned counsel for the applicant, besides perusing the record with due care and circumspection.

Leave granted.

Main case:

Challenge in this appeal is to order dated 14.01.2016 passed by learned Judicial Magistrate, Ist Class, Kurukshetra whereby the Criminal Complaint No.314 of 2014 under Section 138 of Negotiable Instruments Act has been dismissed in default. Learned counsel for the appellant states that on the relevant date when the case was fixed before the trial Court on

14.01.2016 even the accused was not present but still the complaint had been dismissed in default. He states that there was a communication gap between the counsel and the appellant as the appellant was not in the knowledge of the date fixed before the trial Court. The complaint was filed and registered before the trial Court on 26.09.2014 and was at the initial stage and in case, the complaint is restored, no prejudice would be caused to the accused-respondent.

Heard the counsel for the appellant-complainant.

No body has come forward on behalf of respondent to oppose the present appeal despite service.

The appellant has filed the complaint against the respondent-accused with the assertion that on the basis of compromise, the respondent-accused had agreed to pay a sum of ₹ 2,81,000/- to the appellant and in discharge of his legal obligation, he had issued as many as five cheques of different dates. When the said cheques were presented for encashment before the bank, they were bounced on account of insufficient funds.

Since five different complaints have been filed by the appellant, there are chances of confusion in his mind qua the date fixed in the complaint but in any case, the case should not be thrown away on mere technicalities particularly when the offence under Section 138 of Negotiable Instruments Act though is criminal in nature but has a civil liability as well.

Dismissal of complaint on account of non-appearance of the appellant-complainant, which was beyond his control, will certainly cause miscarriage of justice to the appellant-complainant. As per judgment passed

by this Court in **Neh Pal Sharma Versus Bijender Singh 2009(2) RCR**

(Criminal) 751, wherein it was held that dismissal of complaint in default is too harsh for the complainant to non-suit him merely for his non-appearance on a particular date. Therefore, this Court finds that ends of justice will be met if the complainant is given another chance to put forward his claim.

Accordingly, the present appeal is allowed and order dated 14.01.2016 passed by learned Judicial Magistrate, Ist Class, Kurukshetra is set aside. Consequently, the complaint filed by the appellant-complainant is ordered to be restored to its original number and the trial Court is directed to proceed with the same in accordance with law.

Appellant is directed to appear before the trial Court on 26.10.2016.

Registry to transmit a copy of this judgment to the trial Court well before the said date.

(HARI PAL VERMA)
JUDGE

20.09.2016
sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.
Yes/No.