

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

CRM-A No.189-MA of 2014 (O&M)

Date of decision: 6th September, 2016

Meena Kumari

... Petitioner

Versus

Manoj Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. P.R. Yadav, Advocate for the appellant.

None for respondent No.1.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for respondent No.2/State.

FATEH DEEP SINGH, J.

This is an appeal directed against an order dated 16.01.2014 whereby complaint of the present appellant Meena Kumari filed against respondent No.1 Manoj Kumar under Section 138 Negotiable Instruments Act, 1881 (in short, 'the Act') stood dismissed on account of non-appearance of complainant and thus for want of prosecution.

Heard Mr. P.R. Yadav, Advocate for the appellant and Mr. Munish Sharma, Asstt. Advocate General, Haryana on behalf of respondent No.2/State as well as on perusal of the records.

It is well elicited from the records of the courts below and could not be differed by any of the counsel representing the parties, consequent upon filing of criminal complaint by the complainant against

Manoj Kumar on the allegations that the accused had borrowed Rs.3.50 lacs from the complainant and in pursuance of which in acknowledgement of the outstanding liability accused had issued cheque No.527899 dated 25.05.2013 for a sum of Rs.3,50,000/- drawn on Punjab National Bank, Chillar (Rewari) from the account of the accused bearing No.3329000100044228. Upon recording of preliminary evidence and exhibiting of relevant documents Ex.C1 to Ex.C4 through orders dated 02.07.2013 learned Judicial Magistrate 1st Class, Gurgaon summoned the accused for commission of offence under Section 138 of the Act. In spite of repeated issuance of notices and thereafter bailable warrants and non-bailable warrants, the respondent failed to put in appearance and from 10.12.2013 the matter was adjourned to 16.01.2014 for issuance of non-bailable warrants against the accused and it was on that very day on account of non-appearance of the complainant led to dismissal of the complaint for non-prosecution in default. Precisely that is the dispute over it.

It could not be displaced by learned counsel representing the respondent side as has been contended by learned counsel for the petitioner that on the date when the impugned order was passed there was no requirement for appearance of the complainant and it was only meant for appearance of the accused who had been evading his appearance since a long period of time. Nothing on behalf of the petitioner complainant was to be done on that very day and her absence

thus, could not be termed to be an obstacle in processing the case further. Thus, to the mind of this Court presence of the complainant on that date or that of her counsel was not necessitated and in the light of the same, in view of the law laid down in '**Steel Strips Ltd. v. Bhagwati Steels**' 1997(2) CCC 497, where the Hon'ble Supreme Court has dealt with the similar situation impels this Court to set aside the impugned order and to order restoration of the complaint. More so, contention as has been sought to be feverously raised by the respondent side that appeal is not maintainable is well answered in the ratio laid down in '**Shiv Kumar v. Mohd. Sagir**' 1997 (2) All India Criminal Law Reporter 314.

In the light of the same the appeal stands allowed and the parties are directed to put in appearance before the trial Court which shall proceed ahead into the matter as per law.

(FATEH DEEP SINGH)
JUDGE

September 6, 2016
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No