

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

CRM-M-13686 of 2014

Date of decision: 25.02.2016

Ram Kishan

----Petitioner (s)

V/s

Subhash Sharma

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. S.K. Tripathi, Advocate for the petitioner.

Mr. Sarvesh Kumar Gupta, Advocate for
Mr. Ram Bilas Gupta, Advocate for
the respondent.

HARI PAL VERMA, J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C. read with Article 227 of the Constitution of India, is for quashing of impugned order dated 05.02.2014(Annexure P-3) passed by learned Judicial Magistrate Ist Class, Faridabad, whereby, the complaint filed by the petitioner under Sections 138, 141, 142 of Negotiable Instruments Act, was dismissed.

Learned counsel for the petitioner contends that on that day, non-appearance on behalf of the complainant was not intentional, as he was suffering from fever, however, his counsel was present. He further submits that there was hardly one occasion that the complainant failed to appear, however the learned Magistrate dismissed the complaint for want of prosecution.

On the other hand, learned counsel appearing on behalf of the respondent-accused, submits that since the complainant was

not present, there is no illegality in the abovesaid order.

I have heard learned counsel for the parties.

Order dated 05.02.2014 passed by learned Judicial Magistrate Ist Class, Faridabad, reads as under:-

“Case has been again called several time, but none has appeared on behalf of complainant. It is already 3:30 P.M. Waited sufficiently. No further wait is justified. Only counsel for complainant had appeared once and thereafter none appeared on behalf of complainant. As such the present complaint is dismissed for want of prosecution. File be consigned to the record room after due compliance.”

A perusal of the above order dated 05.02.2014 passed by learned Judicial Magistrate Ist Class, Faridabad, shows that the complainant himself was not present, but his counsel was present. Justice demands that the Court should have afforded another opportunity to the complainant to justify his absence instead of dismissing the complaint in default. Therefore, I am of the considered view that the impugned order is liable to be quashed.

Accordingly, impugned order dated 05.02.2014 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Faridabad, whereby, the complaint filed by the petitioner under Sections 138, 141, 142 of Negotiable Instruments Act, was dismissed, is quashed and the complaint is ordered to be restored to its original number and stage.

The parties are directed to appear before the trial Court on 18.03.2016.

25.02.2016
Anjal

[HARI PAL VERMA]
JUDGE