

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

**Criminal Misc. No. M-13894 of 2014
Date of Decision: 27.01.2016**

Satish Kumar

...Petitioner(s)

Versus

Rohit Bassi

...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. Sandeep Arora, Advocate
for the petitioner.

Ms. Sukhpreet Kaur, Advocate
for the respondent.

HARI PAL VERMA J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing/setting aside the order dated 28.9.2011 passed by Judicial Magistrate Ist Class, Jalandhar (Annexure P-2), vide which, the Complaint/Criminal Case No.1500/2/10 dated 3.9.2010 titled as *Satish Kumar v. Rohit Bassi* filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short, “the Act”) was dismissed in default.

The order dated 28.9.2011 reads as under:-

“Present: None for the complainant.

Case called several times since morning but neither the complainant is present and nor his counsel is available. It is already 03:55 p.m. In these circumstances, the present complaint dismissed in default. File be consigned to record room.

Dated: 28.9.2011

*Sd/-
Madan Lal, PCS,
Judicial Magistrate Ist Class,
Jalandhar.”*

As per the averments made in this petition, the petitioner filed a complaint under Sections 138 and 142 of the Act read with Sections 420 and 467 IPC, as the cheque issued by the respondent in favour of the petitioner being dishonoured by the bank authorities. However, the trial Court dismissed the said complaint in default on account of non-appearance of the complainant, vide order dated 28.9.2011. It has been averred that the Clerk of the previous counsel of the petitioner had told the petitioner that since the respondent was declared as proclaimed offender, his presence would be required only when the respondent appears before the trial Court or he is arrested by the police and in these circumstances, he did not appear before the trial Court. However, later on, when the petitioner found the respondent moving freely and was not being arrested by the police, he moved the police station for seeking his arrest, where he came to know that the police is unable to arrest the respondent

in absence of any order of the Court. Therefore, in February, 2014, the petitioner contacted his lawyer for getting a copy of the order, declaring the respondent as proclaimed offender and came to know that the aforesaid complaint was dismissed in default on account of his non-appearance on 28.9.2011. Though the petitioner moved an application for restoration of the complaint, but the same was dismissed vide order dated 12.3.2014 with an observation that the same is not maintainable, since the Magistrate, as a Magistrate, is not competent to revive his own order, dismissing the complaint in default.

In these circumstances, the petitioner has filed the present petition with a prayer to set aside the order dated 28.9.2011.

Learned counsel for the petitioner contends that the order dismissing the complaint in default is very cryptic and non-speaking.

On the other hand, learned counsel for the respondent submits that it is not only on 28.9.2011, rather previously also, the complainant had not put in appearance before the trial Court. However, the order dated 28.9.2011 does not contain such like details.

In view of the facts and circumstances of the case and considering the fact that the respondent-accused had issued a cheque for an amount of Rs.4,50,000/- in favour of the petitioner-complainant, dismissal of the complaint on account of non-

appearance of the complainant will certainly cause miscarriage of justice to the petitioner-complainant. Reference may be made to judgment of a coordinate Bench of this Court titled **Neh Pal Sharma Vs. 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 petition is allowed and order dated 28.9.2011 is set aside. Consequently, the complaint filed by the petitioner-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. Parties are directed to appear before the trial Court on 26.2.2016. Registry to transmit a copy of this judgment to the trial Court well before the said date.

January 27, 2016
AK

(HARI PAL VERMA)
JUDGE