

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

**CRM No. M-16216 of 2015
DECIDED ON: DECEMBER 01, 2016**

M/S RAJASTHAN IRON TRADERS

.....PETITIONER

VERSUS

HARSH KUMAR

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Kulbhushan Sharma, Advocate
 for the petitioner.

 Mr. Shiv Kumar, Advocate
 for the respondent.

JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Section 482 Cr.P.C., petitioner has sought the quashing of impugned order dated March 26, 2015 passed by learned Additional Sessions Judge, Faridabad as well as order dated June 11, 2014 passed by learned Judicial Magistrate Ist Class, Faridabad in a complaint case No. 3216, dated November 17, 2012 whereby, complaint under Section 138 of Negotiable Instruments Act, 1881 (for short 'Act'), has been dismissed for want of prosecution.

The only ground on which the complaint has been dismissed is that,

the petitioner did not obtain *dasti* summons for getting the service effected upon the respondent/accused. In fact, the trial Court as well as lower Appellate Court have not applied their judicial mind to the facts of the case and has committed a grave error while passing the impugned orders. The respondent/accused was ordered to be summoned to fact trial under Section 138 of the Act and it was the duty of the Court to secure the presence of respondent/accused. In case the respondent/accused was not summoned, could be summoned through an ordinary process then the Court concerned should have adopted a coercive methods by issuing bailable or non-bailable warrants of the respondent/accused, as the case may be and not to dismiss a criminal complaint just on the basis of omission or lapse on the part of the complainant.

Thus, both the impugned orders are not sustainable in the eyes of law and are quashed/set aside. The trial Court is directed to restore the complaint and to proceed for its disposal strictly, in accordance with law. A copy of this order be sent to the concerned Court for its compliance.

DECEMBER 01, 2016
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No