

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

**Criminal Misc. No. M-19385 of 2016
Date of Decision:-21.12.2016**

Dr. Priya Kansal

...Petitioner

Versus

Naveen Kansal

...Respondent

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

Present:- Mr. Kehar Singh Hissowal, Advocate
for the petitioner.

Mr. Chander Shekhar Sharma, Advocate
for the respondent.

HARI PAL VERMA J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for setting aside the impugned order dated 10.5.2016 passed by learned Judicial Magistrate 1st Class, Ambala, whereby the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act read with Section 420 IPC against the respondent-accused was dismissed for want of prosecution.

The order dated 10.5.2016 passed by learned Judicial Magistrate 1st Class, Ambala, read as under :-

“Today neither the complainant nor his counsel is present. Case called several times since morning. It is already 2:30 P.M. Further wait is not justified. Hence, the present complaint is dismissed for want of

prosecution. Accused is acquitted from the allegations levelled against him. His bail bond and surety bond also stand discharged. After doing needful, file be consigned to the record room.”

Learned counsel for the petitioner states that it is on account of noting of wrong date, the complainant or his counsel could not appear before the trial Court. In fact the case was fixed for 10.5.2016 but the counsel for the complainant had noted the wrong date as 11.5.2016 and it is only on 11.5.2016 the factum of dismissal of complaint was noticed by the petitioner. Accordingly, the present petition was filed immediately thereafter.

On the other hand, learned counsel for the respondent-accused states that against the order of dismissal of complaint, the petitioner had the remedy of appeal but he has not filed the same. He further states that as averred in the petition, the complaint, if, is restored, some adequate compensation be awarded to the respondent-accused.

I have heard learned counsel for the parties.

The perusal of order shows that non-appearance on the part of the petitioner was not intentional and it is only on account of noting a wrong date, neither the complainant nor his counsel could put in appearance before the Court on the date fixed. Immediately after passing of order dated 10.5.2016, the petitioner has adopted the legal course and accordingly filed the present petition on 25.5.2016, which shows that petitioner was otherwise consistently pursuing his remedy under law.

Accordingly, the present petition is accepted and the order

dated 10.5.2016 passed by learned Judicial Magistrate 1st Class, Ambala is set aside and the complaint filed by the petitioner is restored to its original number. The trial Court shall issue fresh notice to the parties regarding the date fixed for further proceedings.

Since the complaint under Section 138 of the Negotiable Instruments Act read with Section 420 IPC was filed in July 2015, it shall be appreciated if the trial Court expedite the trial.

December 21, 2016
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No