

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-37889 of 2015

Date of decision : May 09, 2016

Rajiv Kumar

....Petitioner

versus

Puran Chand

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Manoj Kumar Pundir, Advocate, for the petitioners
None for the respondent

Fateh Deep Singh, J. (Oral)

The short point involved in this petition is as to the legality of the impugned orders dated 23.7.2015 Annexure P/2 whereby the learned Judicial Magistrate Ist Class, Panchkula dismissed the complaint under section 138 of the Negotiable Instruments Act, 1881 (in short, the Act) preferred by complainant present petitioner Rajiv Kumar against accused respondent Puran Chand.

Heard.

Rajiv Kumar filed a complaint in question on the allegations that the accused in acknowledgment of the outstanding debt of Rs 2 lacs issued the cheque in question but the same was dishonoured on account of

insufficiency of funds and after the requisite formalities, a complaint under section 138 of the Act was filed. The court of learned Judicial Magistrate Ist Class, Panchkula vide orders dated 21.11.2014 summoned the accused under section 138 of the Act and when the accused failed to put in appearance, vide orders dated 19.5.2015, the transferee court issued bailable warrants against the accused for 23.7.2015 when on account of non appearance of the complainant, the complaint was dismissed. The petitioner preferred revision against the said order before the learned Sessions Judge, Panchkula but the same was also dismissed vide order dated 21.9.2015. Hence, the present petition.

The law has been well settled, reference of which can be taken note of *The Associated Cement Co. Ltd. Vs Keshvanand, 1998(1) R.C.R. (Criminal) 309* in which it is clearly held that where the presence of the complainant is not required on a date, it was highly illegitimate for the court to dismiss a complaint in default on account of non appearance of the complainant.

In the present case, the matter was already listed for presence of the accused who has been evading his appearance before the court leading to issuance of bailable warrants. On the day fixed for compliance of these warrants, instead of ascertaining as to the service of these warrants and ensuring that the accused had complied with the orders of the court, instead the court has looked other way around and held that since the complainant has failed to put in appearance, has dismissed in default for non-prosecution

the complaint of the complainant. The complainant had been pursuing his remedy since 20.11.2014 and had completed his preliminary evidence at the first go and had been waiting diligently throughout for his complaint to bear fruits of his labour and a single default by him has led to the dismissal of his complaint is certainly to the mind of this Court is a harsh treatment so meted out to him. It was desirable of the learned court below that since the presence of the complainant was not required for further progress of the case and rather it was the presence of the accused which was material for the progress and thus should not have resorted to such a means. Rather the Magistrate ought to have exercised powers under Section 256 Cr.P.C. and dispensed appearance of the complainant for the date. Thus, in the ends of justice, the impugned order dismissing the complaint in default is hereby set aside. The trial court is directed to proceed ahead into the matter as per law.

May 09, 2016
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(Fateh Deep Singh)
Judge

Whether referred to Reporter ? Yes/No