

217.

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

CRM-A-1780-MA-2016

Date of decision:27.09.2017

SATPAL SINGH

... Appellant

versus

PARTAP DAGAR AND ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Ms. Pratibha Yadav Advocate,
for the applicant-appellant.

HARI PAL VERMA, J. (Oral)

This application has been moved under Section 378(4)
Cr.P.C. for grant of leave to appeal against the order dated 18.07.2016
passed by learned Judicial Magistrate Ist Class, Gurgaon.

On notice of motion having been issued, it has been
reported that the respondents were duly served, however, no one has
put in appearance on their behalf.

I have heard learned counsel for the applicant-appellant and
perused the record with due care and circumspection.

Application is allowed.

Leave to appeal granted.

Office is directed to assign appeal number to the case.

The appellant has filed the present appeal impugning the

order dated 18.07.2016 passed by learned Judicial Magistrate Ist Class,

Gurgaon, whereby the complaint filed by the appellant under Section 138 of Negotiable Instruments Act (for short, 'the Act'), was dismissed for want of prosecution.

Learned counsel for the appellant states that the appellant had filed a complaint under Section 138 of the Act against the respondent-accused and the respondent-accused were issued a summoning order. The respondent-accused did not appear despite the court having issued non-bailable warrants vide order dated 06.11.2015, 04.12.2015, 07.01.2016, 01.02.2016, 04.04.2016. She further states that the appellant-complainant was present along with his counsel on all these dates. However, it is only on 18.07.2016, the appellant-complainant could not appear before the trial Court as his son was not well. Since he was attending his son, he could not inform his counsel and, therefore, the counsel also could not appear.

Notice of motion in the case was issued but no one is present on behalf of the respondents. Thus, the averments made in the present appeal remain unrebutted.

I have heard learned counsel for the appellant.

Considering the fact that it is on account of a single absence of the appellant-complainant and his counsel on 18.07.2016 the complaint was dismissed for want of prosecution, this Court finds that in the absence of any rebuttal to the contentions as raised in the present appeal, it can be inferred that non-appearance on the part of the complainant was on account of ailment of his son.

Be that as it may, but considering the fact that the appellant had filed a complaint under Section 138 of the Act and it is only on account of a single default that the same was dismissed, the present appeal is allowed and the order dated 18.07.2016 passed by learned Judicial Magistrate Ist Class, Gurgaon is set aside and the complaint is restored to its original number. However, the same would be subject to payment of ₹5,000/- with the Legal Services Authority, Gurgaon (now Gurugram).

Trial Court is directed to proceed with the complaint in accordance with law.

(HARI PAL VERMA)
JUDGE

27.09.2017
sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.
Yes/No.