

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

**Criminal Misc. No.A-383-MA of 2016 (O&M)  
Date of Decision: 26.07.2017**

Harbans Singh

...Applicant-Appellant(s)

Versus

Kulwant Singh

...Respondent(s)

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

Present:- Mr. F.S. Virk, Advocate  
for the applicant-appellant.

None for the respondent.

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**HARI PAL VERMA, J.**

**CRM No.6360-2016:**

Prayer in this application filed under Section 5 of the Limitation Act read with Section 482 CrPC is for condonation of delay of 47 days in filing the present application seeking leave to appeal.

For the reasons stated in the application, the same is allowed and delay of 47 days in filing the present application seeking leave to appeal is condoned.

**Criminal Misc. No.A-383-MA of 2016:**

This is an application filed under Section 378(4) CrPC seeking leave to appeal against order dated 12.10.2015 passed by learned Judicial Magistrate Ist Class, Patiala as well as order dated 2.1.2016 passed by learned Additional Sessions Judge, Patiala.

On notice of motion having been issued, it has been reported that the same was duly served upon the respondent through his wife. However, no one has put in appearance on behalf of the respondent.

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

The application is allowed.

Leave to appeal granted.

Office is directed to assign appeal number to the case.

The appellant has challenged the order dated 12.10.2015 passed by learned Judicial Magistrate Ist Class, Patiala, whereby the complaint filed by the complainant-applicant was dismissed in default for want of prosecution and order dated 2.1.2016 passed by learned Additional Sessions Judge, Patiala, whereby the revision petition filed by the complainant-applicant against the order dated 15.12.2015 was dismissed, the same being not maintainable.

Learned counsel for the complainant-appellant has argued that he had filed the complaint in question under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act") along with all relevant documents on 5.2.2015 against the respondent. In the complaint, summons were issued to the respondent to appear before learned Judicial Magistrate

Ist Class, Patiala. On 30.9.2015 and 12.10.2015, when the aforesaid complaint was listed for hearing, the appellant could not appear, as he was suffering from viral fever and therefore, the said complaint was dismissed in default vide order dated 12.10.2015 by learned Judicial Magistrate Ist Class, Patiala. The appellant preferred revision petition against the order dated 12.10.2015, however, the same was also dismissed by learned Additional Sessions Judge, Patiala, vide order dated 2.1.2016, holding that the revision petition is not maintainable, as the respondent-accused has been acquitted. Learned counsel has submitted that non-appearance on the part of the complainant-appellant was not intentional, more particularly when the respondent-accused had issued cheque in favour of the applicant.

Though learned trial Court has rightly dismissed the complaint on account of non-appearance of the complainant-appellant, however, considering the fact that the complainant-appellant was down with viral fever, on the relevant date and more particularly when this fact has not been controverted by the respondent, this Court finds that the complainant-appellant deserves one more opportunity to pursue his complaint, which was otherwise not adjudicated on merit.

Accordingly, the present appeal is allowed, subject to payment of costs of Rs.10,000/-, to be paid to Punjab State Legal Services Authority, Chandigarh and the order dated 12.10.2015 passed by Judicial Magistrate Ist Class, Patiala as well as order dated 2.1.2016 passed by learned Additional Sessions Judge, Patiala are set aside. Consequently, the complaint filed by the applicant under Section 138 of the Act is restored.

The appellant is directed to appear before the Judicial Magistrate Ist Class, Patiala on 28.8.2017.

It is again made clear that deposit of an amount of Rs.10,000/- before the Punjab State Legal Services Authority, Chandigarh shall be a condition precedent for the restoration of the complaint in question.

July 26, 2017  
**AK**

**( HARI PAL VERMA )**  
**JUDGE**

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No