

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-25015-2017

Date of decision: 17.07.2017

Janak Raj

..... Petitioner

Versus

Buta Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Vishal Sodhi, Advocate for the petitioner.

RAMENDRA JAIN, J. (ORAL)

1. By way of instant petition under Section 482 Cr.P.C., the petitioner seeks quashing of order dated 13.11.2015 (Annexure P-2) passed by the learned Chief Judicial Magistrate, Bathinda, whereby the complaint filed by petitioner under Section 138 of the Negotiable Instruments Act (for short 'the Act'), was dismissed in default and further order dated 20.02.2016 (Annexure P-4) dismissing the application for restoration of the said complaint.

2. Learned counsel for the petitioner contends that initially, the complaint under Section 138 of the Act, was filed at Suratgarh (Rajasthan) from where it was returned by the learned Magistrate on 23.09.2014, in view of judgment of the Hon'ble Apex Court in **Dashrath Roop Singh Rathore Vs. State of Maharashtra**, for representation before the Courts at Bathinda. However, no date was given for re-presentation of the complaint at Bathinda. Resultantly, the petitioner re-filed the complaint before the

learned Chief Judicial Magistrate, Bathinda on 03.11.2017 and appearing on

each and every date, but could not appear on a single date on 13.11.2015, on account of having fever. Hence, his complaint was dismissed in default for want of prosecution. Absence of the petitioner on the said date was un-intentional. The application Annexure P-3 for restoration of the complaint filed by the petitioner was also dismissed vide order dated 20.02.2016 (Annexure P-4) by the learned Chief Judicial Magistrate, Bathinda, in view the decision of the Hon'ble Apex Court in **Major General A.S. Gauraya Vs. S.N. Thakur, 1988 (1) RCR Criminal 3**, that order of dismissal of complainant passed by a Magistrate for non-appearance of the complainant is a final order and it cannot be restored by the Magistrate in its inherent power.

3. Keeping in view of the totallity of the facts and circumstances of the case and considering the absence of the petitioner only on a single date, the impugned orders dated 13.11.2015 and 20.02.2016 (Annexures P-2 and P-4, respectively) are hereby set aside and the complaint is ordered to be restored to its original number. The trial Court, shall proceed further in the complaint, in accordance with law. The instant petition stands disposed of accordingly.

5. The petitioner is directed to appear before the learned Chief Judicial Magistrate, Bathinda on 31.07.2017.

July 17, 2017
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No