

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

**CRM No.M-40864 of 2016
Decided on: 03.11.2017**

Avtar Singh

....Petitioner

Versus

Tarsem Singh

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Ms. Riffi Birla Bala, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing the order dated 19.09.2016 (Annexure P2) passed by the trial Court vide which the complaint filed by the petitioner/complainant under Section 138 of the Negotiable Instruments Act, was dismissed on account of non-appearance of the complainant.

Counsel for the petitioner has submitted that the petitioner has filed a complaint against the respondent regarding dishonour of a cheque issued by the respondent in discharge of his liability. The respondent was summoned vide order dated 16.03.2016 and was facing the trial. When the case was listed on 19.09.2016, the same was still at the stage of effecting service on the respondent/accused. Counsel for the petitioner has referred to the orders dated 11.05.2016 and 13.06.2016 i.e. two orders passed immediately before the impugned order to submit that the respondent/accused was avoiding the service and, therefore, he was ordered to be summoned through bailable warrants for 19.09.2016 and as such, on that date also the

respondent/accused was not present and the case was dismissed for non-prosecution on account of non-appearance of the petitioner or his counsel. It is further submitted that counsel for the petitioner was busy in some other Court when the case was called and, therefore, he had a bona fide ground to explain his non-appearance before the trial Court which was neither intentional nor intended to delay the proceedings of the case as the petitioner was making serious efforts for effecting service upon the respondent/accused.

In pursuance to the notice of motion order, notice issued to the respondent/accused received back served, however, no one has put in appearance on behalf of the respondent.

Considering the fact that the case is still at initial stage and the respondent/accused has not put in appearance till date, the trial Court while dismissing the complaint of the petitioner has not recorded any finding that personal appearance of the petitioner was required on that date, it would be in the interest of justice if the impugned order dated 19.09.2016 is set-aside and the complaint is restored to its original number.

Ordered accordingly.

The petitioner himself or through his counsel is directed to appear before the trial Court on 20.11.2017 for further proceedings.

(ARVIND SINGH SANGWAN)
JUDGE

03.11.2017
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No