

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr.No.219

CRA-AS-100 of 2018
(arising out of CRM-A-1779-MA-2015)
Date of Decision:08.10.2018

Tarlochan Singh

....appellant

Versus

Narinder Kumar

.....respondent

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Ms.Shallie Mahajan, Advocate for
Mr.Sharwan Sehgal, Advocate
for the appellant

None for the respondent

ARVIND SINGH SANGWAN, J. (ORAL):

CRM-35396-2015

Prayer in this application is for condonation of delay of 42 days
in filing the application for leave to appeal.

For the reasons stated in the application, the same is allowed.
Delay of 42 days in filing the application for leave to appeal is condoned.

CRM-A-1779-MA-2015

This is an application, filed under Section 378(4) of the Code
of Criminal Procedure, seeking leave to appeal against the order dated
06.07.2015, passed by the Judicial Magistrate First Class, Ludhiana, vide
which, the respondent-accused has been acquitted of charges under Section
138 of the Negotiable Instruments Act, 1881 (*for short 'N.I. Act'*),

dismissing the complaint, filed by the petitioner/complainant, for non-prosecution.

For the reasons stated in the application, the same is allowed.

Leave to appeal granted.

On the direction of the Court, Office has assigned appeal number CRA-AS-100-2018 to the present case.

CRA-AS-100 of 2018

Prayer in this appeal is to set aside the order dated 06.07.2015, vide which the complaint filed by the appellant under Section 138 of the N.I.Act, was dismissed for non prosecution.

Brief facts of the case are that the appellant had filed a criminal complaint under Section 138 of N.I. Act against respondent Narinder Kumar with the allegations that he had obtained a loan of ₹4,75,000/- in the month of November, 2012 for domestic purpose and to discharge his liabilities, respondent-accused issued two cheques; one amounting to ₹2,25,000/- and the another amounting to ₹2,50,000/-; dated 26.03.2013 and 18.03.2013 respectively. However, on presentation of the said cheques to the bank, the same were returned with the remarks '*insufficient funds*', vide return memo dated 20.03.2013 and 28.03.2013, respectively. The appellant, thereafter, served a legal notice upon respondent-accused and having failed to respond to the legal notice, the appellant filed the aforesaid complaint before the trial Court.

Learned counsel for the appellant submits that the appellant was regularly appearing before the trial Court. However, on 06.07.2015, when the case was fixed for making the payment by the respondent, the

complainant or his counsel could not appear and the case was dismissed in default.

Learned counsel for the appellant has argued that in fact, due to noting of wrong date, the counsel as well as the appellant could not appear before the trial Court as the case before the trial Court was fixed for 05.06.2015 and on that date, two cases of the appellant were fixed in the Court of Judicial Magistrate First Class, Ludhiana. One, titled as “Tarlochan Singh vs. Narinder Kumar” and the other, titled as “Tarlochan Singh vs. Sunita” and both the case were adjourned for two different dates and the appellant and his counsel were under the impression that both the cases were adjourned for 15.07.2015, whereas the instant complaint was adjourned for 06.07.2015 and the other was adjourned for 15.07.2015.

Learned counsel further submits that even a perusal of the order dated 06.07.2015 shows that there were talks of compromise between the parties and the case was fixed for making the payments in instalments.

Learned counsel for the appellant has further argued that in fact the respondent had made part payments and the remaining payment was pending and the dismissal of the complaint on technical ground will amount to adversely prejudice the right of the appellant as the appellant has shown a bona fide ground for restoring the same.

There is no representation on behalf of the respondent.

In view of the above, the present appeal is allowed and the impugned order dated 06.07.2015, passed by the trial Court dismissing the complaint of the appellant for non-prosecution, is set aside. Consequently, the complaint filed by the appellant under Sections 138 of the N. I. Act is

restored back to its original number for its decision on merits. The appellant-complainant is directed to appear before the trial Court/successor Court on 30.10.2018. The trial Court is directed to proceed with the matter from the stage where it was dismissed, in accordance with law.

(ARVIND SINGH SANGWAN)
JUDGE

08.10.2018
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Whether speaking/reasoned	Yes/No.
Whether reportable-	Yes/No