

CRM-A-1132 of 2015

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

CRM-A-1132-MA of 2015
Date of Decision: 06.08.2018

Baldev Singh

....Applicant

Versus

Sukhwinder Kaur

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Vivek K. Thakur, Advocate, for the applicant.
Mr. Saurabh Arora, Advocate, for the respondent.

RAMENDRA JAIN, J. (ORAL)

Through this application under Section 378(4) Cr.P.C., prayer has been made for grant of leave to file appeal against order dated 21.10.2013 of the trial Court.

Briefly, applicant filed a complaint under Section 138 of the Negotiable Instruments Act against the respondent in the year 1999. After recording preliminary evidence, respondent was ordered to be summoned vide order dated 17.03.1999. However, on 07.12.1999, complaint of the applicant was dismissed in default on account of his non-appearance. Consequently, the applicant preferred CRR-538 of 2001 before this Court, which was accepted vide order dated 23.11.2012 (Annexure P-3). Trial Court was directed to restore the complaint and proceed in the same in accordance with law, directing the applicant to appear before the trial Court on 05.01.2013, the date on which the applicant appeared before the trial Court, but since original file had not been received from the record room,

therefore, the Court of Sh. Jatinder Pal, Judicial Magistrate Ist Class,

Nokadar adjourned the case to 29.08.2013 for awaiting file from the record

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room. Again on 29.08.2013 file was not received from the record room. Therefore, the case was adjourned to 21.10.2013, on which date, the case of the applicant was transferred by Sh. Jatinder Pal, Judicial Magistrate Ist Class, Nakodar to the Court of Sh. Mahesh Grover, Sub-Divisional Judicial Magistrate Ist Class, Nakodar without any intimation to the applicant. Consequently, the applicant remained present throughout the day before the Court of Sh. Jatinder Pal, Judicial Magistrate Ist Class, Nakodar, without having any knowledge about the transfer of his case. Resultantly, the transferee Court headed by Sh. Mahesh Grover, Sub-Divisional Judicial Magistrate Ist Class, Nakodar, again dismissed the complaint of the applicant in default.

Learned counsel for the applicant *inter alia* contends that the transferee Court illegally dismissed the complaint of the applicant in default without appreciating the fact that no notice of the transfer of complaint of the applicant was ever given by the transferor Court to him. Even the transferee Court also did not legally feel it necessary to issue notice to the applicant before dismissing his complaint in default. Therefore, the impugned order is not sustainable in the eyes of law.

On the other hand, learned counsel for the respondent vehemently opposing the above submissions, pleaded legality and validity of the impugned order.

Having considered rival submissions made by both the sides, I find merit in the instant application for the reason that no notice was ever issued to the applicant for transfer of his complaint from one Court to the other. Applicant was kept in complete dark about transfer of his complaint.

Therefore, he cannot be blamed for the same. Learned counsel for the respondent has not been able to show that the applicant had any knowledge

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about transfer of his case.

Considering above factual aspect of the case, impugned order is set aside. Complaint of the applicant is ordered to be restored to its original number with direction to the trial Court to proceed further in accordance with law.

Both the sides are directed to appear before the trial Court on 24.08.2018.

Disposed of.

August 06, 2018
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No