

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 10943 of 2018 (O&M)

Date of decision : 26.4.2018

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Arun Kumar

.....Petitioner

vs.

Sunder Lal Sharma

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Ashish Yadav, Advocate for the petitioner.

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H. S. Madaan, J. (Oral)

In a complaint under Section 138 of the Negotiable Instruments Act, filed by complainant Arun Kumar against accused Sunder Lal Sharma, Judicial Magistrate Ist Class, Gurgaon, vide judgment dated 28.5.2012, convicted the accused for an offence under Section 138 of the Negotiable Instruments Act and directed him to pay the compensation equivalent to twice the cheque amount i.e. Rs.6,50,000/-. It is stated that this amount of compensation was not paid, as such the complainant had filed an application under Section 421 Cr.P.C., which was however dismissed by the trial Magistrate, vide order dated 31.10.2017, on account of non-appearance of the complainant or any other authorized person on his behalf. It is stated that notice to accused was yet to be issued when this order was

passed and that non-appearance was not intentional or willful, but for the reason that petitioner was in some personal difficulty on that day and he had informed his counsel. However, before the counsel could inform the court in that regard, the application was dismissed. The setting aside of this order is prayed for.

Learned counsel for the petitioner has referred to citation ***Kumaran vs. State of Kerala and another 2017 (2) RCR (Criminal) 879,*** of Hon'ble Supreme Court, wherein it was observed that when in a case under Section 138 of the Negotiable Instruments Act, the accused had undergone both the sentences including default sentence, the amount of compensation would still be recoverable in the manner provided under Section 421 Cr.P.C.

Under these circumstances, I find sufficient reasons to set aside the impugned order and restore the application. Ordered accordingly. The trial Court is directed to dispose of that application on merits in accordance with law.

The petition stands allowed accordingly.

26.4.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No