

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-10616-2017

Date of decision: 26.10.2018

Ramandeep Sharma

..... Applicant

Versus

M/s Atma Ram Mela Ram Steels Pvt. Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Abhijeet P.S.Chaudhary, Advocate for the petitioner.

Mr. Manish Jain, Advocate for the respondents.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., prayer has been made for setting aside the order dated 06.12.2016 (Annexure P-2) of the Sub Divisional Judicial Magistrate, Nabha, whereby Complaint Case No. 522/2016 dated 17.10.2016 (Annexure P-1) titled as “Ramandeep Sharma Vs. M/s Atma Ram Mela Ram Steels Pvt. Ltd. and others” under Section 138 of the Negotiable Instruments Act, 1881 (for short-'the Act') and Section 420 IPC, was dismissed in default, on account of non-appearance of the petitioner.

Learned counsel *inter alia* contends that the the petitioner filed a complaint under Section 138 of the Act and Section 420 IPC, against the respondents, who was appearing on each and every date. However, on a single default of non-appearance on 06.12.2016, his complaint was dismissed in default. Non-appearance of the petitioner before the trial Court in not intentional or deliberate. After transfer of the case from Ludhiana to

dismissal of complaint awarded to the petitioner, is dis-proportionate to the act of his non-appearance on a single date. The petitioner would suffer irreparable loss, if, the impugned order dated 06.12.2016, dismissing his complaint, is not set aside. The instant petition has been filed, for the reason that Magistrate, has no power to review his own order of dismissal of the complaint.

On the other hand, learned counsel for the respondents vehemently opposing the submissions of learned counsel for the petitioner, pleaded the legality and validity of impugned order Annexure P-2.

After giving anxious consideration to the rival submissions made by learned counsel for both the sides, this Court finds merit in the instant petition, inasmuch, as duty of the Courts is to impart justice and not to non-suit the litigants on technical grounds. The absence of petitioner or his counsel does not seem to be intentional or deliberate. On a single default of petitioner and his counsel for non-appearance, complaint has been dismissed, which is disproportionate and a very harsh step taken by the trial Court.

Considering overall facts and circumstances of the case, the instant petition is accepted. The impugned order dated 06.12.2016 (Annexure P-2), is set aside. Accordingly, trial Court is directed to proceed further with the complaint (Annexure P-1) of the petitioner, in accordance with law, by restoring the same to its original number, subject to costs of ₹2000/- to be paid to respondents-accused.

October 26, 2018

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(RAMENDRA JAIN)

JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No