

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

CRM-M-25065 of 2018.

Decided on:-July 02, 2018.

Smt. Meera Rani.

.....Petitioner.

Versus

M/s Surya Industries and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Sachin Bhardwaj, Advocate for
Mr. Prabhjot Singh, Advocate
for the petitioner.

HARI PAL VERMA, J. (ORAL)

The petitioner has filed present petition under Section 482 Cr.P.C. for quashing of order dated 20.01.2018 (Annexure P-4) passed by learned Sub-Divisional Judicial Magistrate, Jalalabad (W), whereby the application dated 06.02.2017 (Annexure P-3) filed by the petitioner for restoration of the complaint, was dismissed.

Briefly stated, the petitioner had filed a complaint under section 138 read with Section 141 of the Negotiable Instruments Act, 1881 against the respondents on 16.04.2015. However, the said complaint was dismissed for want of prosecution by learned Magistrate vide order dated 28.01.2016. The said order dated 21.08.2016 reads as under:

“Present:- None for the complainant.

Case called several times since morning but none has put in appearance on behalf of the complainant. It is 3.50 P.M. Consequently, present complaint is dismissed for want of

prosecution. File be consigned to the Judicial Record Room, Jalalabad (W), after due compliance.”

Thereafter, the petitioner had filed an application seeking restoration of the complaint on the ground that the complainant is residing at Sardoolgarh, which is approximately 200 KMs away from Jalalabad (West) and the complainant used to call her counsel on mobile phone to ascertain the status of the complaint. The conducting lawyer always used to tell him that he is busy in the Court and the complainant will call him at a later stage. It was on 06.02.2017, when the complainant came to know that the aforesaid complaint has already been dismissed for non-prosecution vide order dated 28.01.2016.

The application for restoration of the complaint has been dismissed by learned Magistrate on the ground that the Court has no power to review the order passed by it.

Counsel for the petitioner states that there is no *mala fide* on the part of the petitioner-complainant. She had filed the complaint by engaging a lawyer, but she had not been informed by her counsel about the dismissal of the complaint.

Be that as it may and without commenting on the merits of the case, but considering the fact that the complaint was dismissed for want of prosecution by learned Magistrate vide order dated 28.01.2016 for single default, justice demands its restoration and decision on merit.

Accordingly, the present petition is allowed and the orders dated 28.01.2016 and 20.01.2018 passed by learned Magistrate are set aside. The

complaint is ordered to be restored to its original number and the trial Court shall proceed in the case in accordance with law.

The petitioner-complainant is directed to appear before the trial Court on 24.07.2018.

July 02, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No