

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M- 31634 of 2014(O&M)  
Date of decision: September 26, 2018

**Rishi Sharma**

**... Petitioner**

versus

**Akhilesh Sharma**

**.... Respondent**

**CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Sanjeev Gupta, Advocate  
for the petitioner.

None for the respondent.

----

**RAMENDRA JAIN, J.(Oral)**

Through this petition under Section 482 Cr.P.C., challenge has been laid to order dated 22.7.2014 (Annexure P-2), of the trial Court, whereby the complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') filed by the petitioner was dismissed in default, on account of his non-appearance.

In nutshell, in a complaint under the Act filed by the petitioner against the respondent, after conclusion of petitioner's evidence, the case was fixed for 22.7.2014 for recording statement of the respondent under Section 313 Cr.P.C. However, on that day, on account of non-appearance of the petitioner, his complaint was dismissed for non-prosecution.

Learned counsel inter alia contends that absence of the petitioner on 22.7.2014, was not intentional or deliberate. The petitioner was regularly appearing during trial on each and every date. The

disproportionate to act of the petitioner of his non-appearance on a single date. The applicant would suffer irreparable loss, if the impugned order dated 22.7.2014, dismissing the complaint of the petitioner is not set aside. The instant application has been filed, for the reason that Magistrate, has no power to review his own order.

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

Considering overall facts and circumstances of the case, the impugned order dated 22.7.2014 is set aside. Trial Court is directed to proceed further with the complaint of the applicant, in accordance with law, by restoring the same to its original number.

**(RAMENDRA JAIN)**  
**JUDGE**

**September 26, 2018**  
***archana***

**Whether speaking/reasoned? Yes/No**  
**Whether reportable? Yes/No**