

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr.No.129

CRM-M-38481-2017
Date of Decision:18.12.2018

Yashpal Chaudhary

....petitioner

Versus

Vishal Sharma,

.....respondent

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Manish Soni, Advocate
for the petitioner

Mr.D.D.Singla, Advocate
for the respondent

ARVIND SINGH SANGWAN, J. (ORAL):

Prayer in this petition is to set aside the order dated 10.04.2017 passed by the Judicial Magistrate First Class, Gurugram, vide which the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N.I. Act'*), was dismissed for non-prosecution.

Brief facts of the case are that the petitioner had filed a complaint under Section 138 of the N.I.Act, on the ground that the respondent had issued a cheque dated 31.12.2006, for an amount of Rs.20 lakhs, which was dishonoured by the bank on account of “insufficient funds”, when presented by the petitioner.

Thereafter, the complainant filed a complaint before the trial

Court and the trial Court vide order dated 06.03.2007 summoned the respondent/accused. The respondent thereafter preferred a revision before the Court of Sessions Judge, Gurgaon, which was dismissed on 23.05.2013. Thereafter, when the case was fixed for appearance, the trial Court, on 17.07.2014, after accepting the bail/surety bonds of the respondent, issued a notice to the complainant and the complainant appeared before the trial Court. In the meantime, the complaint was returned on 01.10.2014, in view of the judgment of the Hon'ble Supreme Court in *Criminal Complaint No.2287 of 2009, Dashrath Rupsingh Rathod vs. State of Maharashtra and another*”, and when the case was transferred back to the trial Court, it was again listed for issuance of notice to the respondent. On 22.02.2017, the notice was issued to the respondent by way of publication and on the next date of hearing i.e.10.04.2017, the case was dismissed for non-prosecution as the petitioner or his counsel could not appear.

Learned counsel for the petitioner has submitted that in fact on the date when the case was dismissed for non-prosecution, it was fixed for appearance of the respondent and not for the proceedings like recording of evidence. It is further stated that the non-appearance of the petitioner was bona fide on account of the fact that the presence of the complainant was not necessary on the date when the case was fixed for awaiting service of the respondent through publication.

It has been held by the Hon'ble Supreme Court in **2002(7) SCC 726, Mohd.Azeem vs. A.Venkatesh and another**, that in case a complaint under Section 138 of the N.I.Act is dismissed on account of a single default of the complainant, bona fide ground given by the complainant for his non-

appearance should not be disbelieved.

It is also held by this Court in **2009(1) RCR (Criminal) 442, *Purushotam Mantri vs. Vinod Tandon @ Hari Nath Tandon***, that in case of dismissal in default of a complaint under Section 138 of the N.I.Act, it will be too harsh for the complainant to non-suit him merely for his non-appearance on one date and the complaint was restored.

Learned counsel appearing for the respondent could not dispute the factual position.

After hearing learned counsel for the parties, I find merit in the present petition. Considering the ratio of law laid down by the Hon'ble Supreme Court as well as this Court in *Mohd.Azeem' case (supra)* and *Purushotam Mantri's case (supra)*, the present petition is allowed and the impugned order dated 10.04.2017 passed by the trial Court dismissing the complaint of the petitioner for non-prosecution, is set aside. Consequently, the complaint filed by the petitioner under Section 138 of the N. I. Act is restored back to its original number for its decision on merits. The petitioner/complainant is directed to appear before the trial Court/successor Court on 16.01.2019. The trial Court is directed to proceed with the matter from the stage where it was dismissed, in accordance with law.

(ARVIND SINGH SANGWAN)
JUDGE

18.12.2018

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Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No