

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

CRM-A-1332-MA-2017 (O & M)

Date of Decision:-19.07.2019

Sumant Sinha

...Appellant

Versus

Radhakrishan Kishore

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present:- Mr. Arnav Sood, Advocate
for the applicant-appellant

MANOJ BAJAJ J.(Oral)

CRM-19451-2017

For the reasons mentioned in the application, delay of 171 days
in filing the appeal is condoned.

CRM stands allowed.

CRM-A-1332-MA-2017

Sumant Sinha appellant/complainant is aggrieved against the
order dated 10.10.2016 passed by the Judicial Magistrate 1st Class,
Gurgaon, whereby the trial Court has dismissed the complaint under Section
138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), on the
ground of non-appearance of the complainant.

At the time of passing the impugned order, evidence on behalf
of respondent was being recorded.

Learned counsel contends that on 05.1.2015 the complaint was
fixed for the purpose of recording evidence of respondent and the

respondent moved an affidavit in evidence. The trial Court at Delhi directed the respondent to record his testimony orally and not by way of filing affidavit and further directed to move a formal application under Section 315 Cr.P.C. Thereafter, the complaint was adjourned for a couple of times and ultimately vide order dated 03.3.2016, the trial Court at Delhi transferred the matter to Gurgaon District courts as the petitioner maintained his account outside the territorial jurisdiction of Central District of Delhi and after enactment of the Negotiable Instruments (Amendment) Act, 2015, the Tis Hazari Courts ceased to have jurisdiction to entertain the said complaint. The trial Court at Delhi directed the parties to appear before the Chief Judicial Magistrate, Gurgaon on 05.5.2016 for further proceedings. Thereafter the matter was fixed before the Judicial Magistrate 1st Class, Gurgaon on 02.9.2016 for issuance of notice. On 02.9.2016 counsel on behalf of complainant put in appearance before the trial Court at Gurgaon, whereas no one appeared on behalf of respondent/accused side, and the trial Court issued notice to the respondent for appearance on 10.10.2016. On 10.10.2016, as the complainant was not in India, he requested his counsel to attend the matter and move an application for exemption from personal appearance on his behalf. However, due to strike of cab drivers, the counsel for the complainant could not appear before the trial Court when the case was called and was able to reach the Court around 2.20 pm for the reasons beyond her control. However, the trial Court passed the impugned order on 10.10.2016.

This Court is of the opinion that the order, whereby the

complaint was dismissed, strictly does not amount to acquittal and, therefore, the petition is treated as a petition under Section 482 Cr.P.C.

Though the accused/respondent has not been served, however, considering the relief claimed in the petition, service upon respondent is not necessary as it would cause extra burden upon him. However, it shall be open for the respondent to make an application for recalling of this order in case the present petition is founded on incorrect facts/grounds.

The contents of the petition have been perused and learned counsel for the applicant has been heard.

A perusal of the impugned order reveals that the Court has not considered the attending circumstances i.e. the stage of the trial and in a very brief manner proceeded to dismiss the complaint presuming the absence on the given date as deliberate and willful. Many a times the complainant is also prevented to put in appearance because of the sufficient reasons on a given date and the explanation offered in the petition for his absence on that date appears to be reasonable and the same is accepted.

Resultantly, the impugned order dated 10.10.2016 is set aside and the complaint is ordered to be restored to its original number.

The petitioner/complainant is directed to appear before the trial Court on 13.08.2019 and the trial Court shall proceed with the complaint in accordance with law.

July 19, 2019
Vijay Asija

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No