

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

276

CRM-A-286-MA of 2018 (O&M)

Date of decision: 22.01.2019

Kamal Singh

...Applicant

Vs.

Seema Vaid

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Vinod Bhardwaj, Advocate
for the petitioner.

RAMENDRA JAIN, J.(ORAL)
CRM No. 4300 of 2018

For the reasons mentioned in the application which is supported by an affidavit, the same is allowed and delay of 132 days in filing application for grant of leave to appeal is condoned.

CRM-A-286-MA of 2018

1. Through the instant application under Section 378(4) Cr.P.C., prayer has been made for grant of special leave to file accompanying appeal against the order dated 19.05.2017, of the trial Court, whereby the complaint under Section 138 of the Negotiable Instruments Act, 1881, filed by the applicant was dismissed in default, on account of his non-appearance.

2. Learned counsel, *inter alia*, contends that the complaint was filed in the year 2016 and till the date of dismissal of complaint on 19.05.2017, the applicant was regularly appearing on each and every date without any default. The punishment of dismissal of complaint awarded to the applicant is dis-proportionate to the act of applicant of non-appearance on a single date. The applicant

would suffer an irreparable loss, if the impugned order dated 19.05.2017, dismissing the complaint of the applicant is not set aside. The instant application has been filed, in view of the fact that the Magistrate, has no power to review his own order of dismissal of the complaint.

3. After giving anxious consideration to the submissions made by learned counsel for the applicant, this Court is of the considered opinion that nobody should be condemned unheard. Duty of the Courts is to impart justice to the litigants and not to non-suit them on technical grounds. In the instant case, only on a single default of the applicant or his counsel, the complaint was dismissed vide impugned order which is a very harsh step taken by the trial Court.

4. Considering the overall facts and circumstances of the case, the impugned order dated 19.05.2017, is set aside, subject to costs of ₹2,000/- to be deposited with the Haryana State Legal Services Authority, within a period of one week from today, failing which the instant Criminal Miscellaneous Application shall be deemed to have been dismissed. The 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.

5. The instant Criminal Miscellaneous Application, stands disposed of, accordingly.

January 22, 2019

Poonam Sharma

**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No