

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

CRM-A-2297-MA-2017

Date of decision: May 02, 2019

Vijay Kumar	Versus	Applicant
Gurmeet Singh		Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ravi Kumar Matto, Advocate
for the applicant.

ARVIND SINGH SANGWAN, J. (Oral)

The present application has been filed for setting aside the order dated 8.8.2017 passed by the Judicial Magistrate 1st Class, Chandigarh vide which the complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') was dismissed for non-prosecution.

Brief facts of the case are that the applicant ha filed the complaint under Section 138 of the Act on account of dishonouring of a cheque of Rs.90,000/- issued by the respondent in August, 2012.

After the cheque was dishonoured, the applicant served a legal notice and filed the complaint on 15.1.2014, which remained pending before the trial Court.

Later on, the complaint was returned on the point of jurisdiction and the applicant again filed it in the Court of Judicial Magistrate 1st Class, Chandigarh, as per the order dated 6.1.2015 passed by the Judicial Magistrate 1st Class, Fatehgarh Sahib.

The trial Court, thereafter, vide order dated 26.5.2017 framed the charge against the respondent for the offence under Section 138 of the Act and

the case was fixed for complainant's evidence for 17.7.2017 for post-charge evidence. The complainant/applicant appeared and filed his affidavit along with Exs.C-1 to C-4 and the case was adjourned to 21.7.2017 for cross-examination. On 21.7.2017, the applicant appeared, however, the respondent-accused absented and his bail/surety bonds were cancelled and non-bailable warrants were issued against him. Again on the adjourned date, fresh non-bailable warrants were issued against the respondent for 8.8.2017.

On the adjourned date, due to ill health of the applicant, he could not appear before the trial Court as it was fixed for procuring the presence of the respondent by non-bailable warrants and on account of non-appearance of the applicant, the case was dismissed for non-prosecution.

In reply to the notice of motion, no one has appeared on behalf of the respondent to contest the present application.

The counsel for the applicant has submitted that even on the date when the impugned order dated 8.8.2017 was passed, none appeared on behalf of respondent-complainant and the case was dismissed for non-prosecution. Only on account of the non-appearance of the applicant, the trial Court could have adjourned the case to procure the presence of the respondent through non-bailable warrants.

After hearing counsel for the applicant, I find that the applicant has a good ground for restoration of the complaint.

Admittedly, two days prior to the date when the case was dismissed for non-prosecution, the applicant was pursuing his complaint and

has appeared himself as a witness in examination-in-chief and the case was adjourned for cross-examination and the accused, instead of cross-examining, the applicant absented himself from the Court proceedings. Even on the subsequent dates, the accused was not present and fresh non-bailable warrants were issued for 8.8.2017 and, therefore, the case was, in fact, fixed on that date for procuring the presence of the accused through non-bailable warrants, therefore, the trial Court has not appreciated that no effective proceedings were to take place, like cross-examination of the applicant as the case was fixed only for procuring the presence of the respondent and in the eventuality, he had appeared, he had to apply fresh bail.

As it is clear from the impugned order that even on 8.8.2017, the accused did not appear and, therefore, the trial Court had adopted a very harsh view in dismissing the appeal for non-prosecution, despite the fact that the applicant was pursuing the same since 2014.

In view of the above, the application is allowed, the impugned order dated 8.8.2017 passed by the Judicial Magistrate 1st Class, Chandigarh is set aside and the trial Court is directed to restore the appeal from the stage it was dismissed for non-prosecution and proceed further, in accordance with law.

The applicant is directed to appear before the trial Court on 20.5.2019.

May 02, 2019
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No