

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

CRM-A-1618-MA-2014 (O & M)

Date of Decision:-22.07.2019

Naresh Kumar

...Applicant

Versus

Satyawan

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present:- Mr. Naveen Gupta, Advocate for
Mr. V.D. Sharma, advocate
for the applicant.

Mr. Ajay Kumar Kansal, Advocate
for the respondent.

MANOJ BAJAJ J.(Oral)

CRM-32339-2014

For the reasons mentioned in the application, delay of 315 days
in filing the special leave to appeal is condoned.

CRM stands allowed.

CRM-A-1618-MA-1014

Challenge is to the order dated 25.9.2013, passed by the Chief
Judicial Magistrate, Jind, whereby the trial Court has proceeded to dismiss
the complaint filed by the complainant Naresh Kumar, for the offence
punishable under Section 138 of the Negotiable Instruments Act, 1881 (in
short' the Act') as the complainant had not appeared in the Court.

Learned counsel for the applicant has contended that on

25.9.2013 the complaint was fixed for filing reply by the respondent-accused to the application filed under Section 326(3) Cr.P.C. As earlier evidence was recorded by the then Presiding Officer, therefore, as per Section 326(3) Cr.P.C., it was mandatory that in case of summary trial proceedings, the evidence requires to be recorded by the same Magistrate. It is further submitted that the counsel for complainant before the trial Court had noted the wrong date i.e. 25.10.2013 instead of 25.9.2013, therefore, for this reason, neither the complainant nor the counsel for the complainant appeared on 25.9.2013 before the trial Court.

The impugned order dated 25.9.2013 strictly does not amount to acquittal as the Court has dismissed the complaint only on account of absence of the complainant. Therefore, the present petition is treated a petition under Section 482 Cr.P.C.

Learned counsel has further contends that the absence on the given date was bona fide as the complainant and his counsel had noted a wrong date. Even otherwise, the proceedings were for filing of reply to the application under Section 326(3) Cr.P.C. on behalf of respondent-accused side and, therefore, the Court has committed an error in passing the extreme order of dismissal of the complaint.

This Court finds that the explanation offered for the absence of complainant is reasonable, and the same is accepted. It is to be borne in mind that many a times the complainant or counsel can be prevented by sufficient reasons on a given date from putting in appearance before the Court and every such absence shall not necessarily be construed deliberate

or wilful.

Considering the nature of relief sought in the present petition, this Court does not find it necessary to serve the respondent, however, in case it is found that the petitioner has mislead this Court, it shall be open for the respondent/accused to make an application for recalling the order.

Resultantly, the impugned order dated 25.9.2013 passed by the trial Court, is set aside. The complaint is restored to its original number. The petitionere/complainant is directed to appear before the trial Court on 29.8.2019 and the trial Court shall thereafter proceed the complaint in accordance with law.

The petition is allowed.

July 22, 2019
Vijay Asija

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No