

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

CRM-M-25877-2017 (O&M)

Date of decision : 29.04.2019

Sanjay Kaushik

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Abhimanyu Singh, Advocate for the petitioner.

Mr. Karan Sharma, AAG, Haryana.

ANIL KSHETARPAL, J. (ORAL)

A complaint filed under Section 138 of the Negotiable Instruments Act was dismissed for non-prosecution as neither the complainant nor accused was present in person on 18.12.2015.

Learned counsel for the complainant filed a revision petition which has been allowed by the learned Additional Sessions Judge, Bhiwani vide order dated 09.01.2017.

Learned counsel for the petitioner has submitted that against the order dismissing the complaint for non-prosecution, no revision was maintainable and his remedy was only to file an appeal under Section 378(4) of the Code of Criminal Procedure.

Without going into the technicalities of the matter and keeping in view the fact that objection being raised is technical, therefore, this Court

treats this petition as an appeal against order dated 18.12.2015 and set aside the same for the cogent reasons which have been recorded by the Additional Sessions Judge, Bhiwani, which reads as under:-

*“4. There is substance in the arguments of learned counsel for revisionist-petitioner on account that on single instance of non appearance of complainant, the criminal complaint should not be dismissed. In this regard, learned counsel for revisionist-petitioner has relied upon **Ratanlal Gulabchand Gupta Vs Shahara Sev Gruh Udyog Bhandar 2001(4) RCR (Criminal) 716** wherein it was held that in such matters the approach of the Court should have been pragmatic and not pedantic. If the matters are decided by use of the power to dismiss the matter for default, it does not give a good name to the institution. Where the litigants approach the Court for redressal of grievances, the case are to be decided on merits with a judicial approach rather than the Courts exercising power to dismiss the matter for default.*

5. This is exactly what the Court below has done in the present case.

*6. Similar view was taken by Hon'ble High Court of Punjab and Haryana in **Print Links (India) and another – Appellants Versus M/s. Kiran Paper Convertors & Merchants and others – Respondents 2008(1) R.C.R. (Criminal) 144** wherein it was held that in such circumstances, it should be endeavour of the court to render substantial justice to the parties and not to resort to technicalities to defeat the substantial right of a person, who has knocked its doors in expectation that his grievance would be redressed. The proceedings under Section 138 of the Act, though criminal in nature, do not really signify a*

criminal content and flow from the Act, the basic object and purpose of which is to harness the violators of the transactions arising from mercantile law and to ensure that the necessary commitment flows from their obligation and make them liable for criminal prosecution to achieve the aforesaid objective.”

In view of the aforesaid facts, the technical objection which has been raised by the learned counsel for the petitioner ceases to exist.

Hence, the present petition is disposed of.

29.04.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No