

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

**CRM-M No.14282 of 2019 (O&M)
Date of Decision: 01.04.2019**

Ashwani Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Sachin Rai Vaid, Advocate for the petitioner.

MAHABIR SINGH SINDHU, J. (Oral)

Present petition has been filed under Section 482 of the Code of Criminal Procedure (*for short 'Cr.P.C.'*) for setting aside the impugned order dated 11.06.2018 (**P-3**), passed by learned Judicial Magistrate Ist Class, Ambala, vide which, complaint filed by the petitioner was dismissed for non-prosecution as well as order dated 28.11.2018 (**P-1**), whereby learned Sessions Judge, Ambala has dismissed the criminal revision against the aforesaid order on account of non-appearance of the petitioner as well as his Counsel.

Paper-book reveals that petitioner filed a complaint against one Smt. Parveen Kapil under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'Act'*), but the same was dismissed for non-prosecution at the stage of recording of preliminary evidence by learned JMJC, Ambala, vide order dated 11.06.2018 (**P-3**). Aggrieved against the aforesaid order, revision petition was filed, but again, neither the petitioner; nor his Counsel appeared at the time of hearing on 28.11.2018 and that resulted into dismissal for non-prosecution by learned Sessions Judge, Ambala. Hence, the present petition.

Perusal of the paper-book reveals that even Smt. Parveen Kapil has not been impleaded as a party respondent in the present petition, rather State of Haryana, who has no concern in the matter, is wrongly arrayed as sole respondent, therefore, this Court was inclined to dismiss the petition only on this ground. Still further, even the necessary and affected person has not been arrayed as a party respondent, therefore, that is another ground for rejection of this petition, but that will unnecessarily add to the plight of the petitioner on account of the advice of his Counsel.

Consequently, keeping in view the basic principle of law that as far as possible, the *lis* should be decided after hearing both sides, this petition is allowed and impugned order dated 11.06.2018 (P-3) and order dated 28.11.2018 (P-1), passed by both the Courts below are set aside subject to payment of costs of ₹ 5,000/-, to be paid by the petitioner to the District Legal Services Authority, Ambala.

However, it is clarified that since the present petition is allowed without impleadment as well as hearing of the affected person, therefore, Smt. Parveen Kapil would be at liberty to move an appropriate application for recalling of this order, if so desires. Petitioner is directed to appear before learned trial Court in Complaint bearing CRN No.HRAM03001820-2017 on 25.04.2019.

April 01, 2019

Mamta/Gagan

**(MAHABIR SINGH SINDHU)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>