

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

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**CRM-M-33750-2017 (O&M)
Date of Decision: 09.07.2019.**

Abdul Hameed

....Petitioner.

Versus

Mushtaq Ahmed and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Dhirinder Chopra, Advocate for the petitioner.

Shekher Dhawan, J.

Present petition is challenge to the order dated 08.06.2017 passed by Sub Divisional Judicial Magistrate, Malerkotla, declining the prayer of the applicant, who is complainant in case under Section 138 of Negotiable Instruments Act, for restoration and withdrawal of his complaint.

Learned counsel for the petitioner contended that as respondent/accused is not residing in India and he wanted to withdraw the present complaint having been filed because that was a futile exercise as per him.

Learned Magistrate has simply declined the prayer on the ground that the file has already been consigned to the record room and same cannot be taken up from the record room on asking of the present petitioner.

As the petitioner, who is complainant in this case and he had every right to move an application for restoration of the case and withdraw his complaint and learned Magistrate failed to exercise the authority as per law. As regard to that, the order dated 08.06.2017 is hereby set aside.

As regard to arrest of the accused, who was declared proclaimed offender, learned trial Judge shall be at liberty to take appropriate action against him as the Court concerned considers appropriate at that stage. However, the present application is allowed to be entertained and complainant be permitted to withdraw his complaint.

In view of the above, the present petition stands disposed of.

(SHEKHER DHAWAN)
JUDGE

09.07.2019

komal

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No