

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

264

CRM-M-46578-2016 (O&M)

Date of decision : 25.11.2019

Shamsher Singh

.....Petitioner

versus

Rajinder Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None.

ANIL KSHETARPAL, J. (ORAL)

Service of notice on the respondent is complete, however, no one has put in appearance on behalf of the respondent.

Dismissal of complaint under Section 138 of the Negotiable Instruments Act, 1881 for non-prosecution has been challenged in the present petition under Section 482 of the Code of Criminal Procedure.

It has been pointed out that originally the complaint was filed in the court of Judicial Magistrate Ist Class, Panipat. After considering the addition of Section 142-A providing for validation for transfer of pending cases (added by Act No.26 of 2015 with effect from 15.06.2015), the case was transferred to the Court of Chief Judicial Magistrate, Karnal by Judicial Magistrate Ist Class, Panipat, vide order dated 07.04.2016. Complainant was directed to appear in the Court of Chief Judicial Magistrate, Karnal on 15.07.2016. On 15.07.2016, Judicial Magistrate Ist Class, Karnal dismissed the case for non-prosecution.

As noticed above, the direction was to appear before the court of Chief Judicial Magistrate, Karnal, whereas the impugned order has been passed by Judicial Magistrate Ist Class, Karnal. The order has been passed

on the very first date when parties were directed to appear.

Keeping in view the facts of the case, the Judicial Magistrate Ist Class, Karnal, has erred in dismissing the complaint for want of prosecution. Judicial Magistrate Ist Class, Panipat had directed the complainant to appear before the Court of Chief Judicial Magistrate, Karnal, on 15.07.2016. Further the Court must always make an endeavour to decide the case on merits rather than on small defaults of one party or other.

Keeping in view the aforesaid fact, present petition is allowed and the order dated 15.07.2016 is restored to its original number.

Learned Judicial Magistrate is requested to issue notice to the complainant.

November 25, 2019
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(ANIL KSHETARPAL)
JUDGE

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