

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

**CRM-M-38208-2019
Date of decision-09.09.2019**

Sanjay Sharma

...Petitioner

Vs.

Tajinder Kumar

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Somesh Sharma, Advocate for the petitioner.

MANOJ BAJAJ, J.

Petitioner- Sanjay Sharma has filed this petition under Section 482 Cr.P.C for quashing of the order dated 20.08.2019 passed by the learned Sub Divisional Judicial Magistrate, Kalka, District Panchkula whereby the complaint registered under Section 138 of Negotiable Instruments Act, 1881 read with Section 420 Indian Penal Code, was dismissed for want of prosecution.

Learned counsel for the petitioner contends that after filing of the complaint, he was regularly appearing before the trial Court. However, on the said date i.e.20.08.2019, he did not appear as he noted the wrong date as 22.08.2019 instead of 20.08.2019 and the Court has proceeded to pass the extreme order of dismissal of the complaint for want of prosecution.

On the said date, the appearance of the complainant would have been formal as despite service, the accused had not appeared. Therefore, in the absence of the accused, no effective proceedings could have taken place.

Ofcourse, Section 256 Cr.P.C lays down one of the option with the Magistrate to dismiss the complaint, in case the complainant does not appear but at the same time, the other option is also given i.e. to adjourn the hearing to some other day, in case the valid reason is available.

Many a times, the accused or counsel can be prevented by sufficient reasons to put an appearance before the Court on a given date and every such absence cannot be necessarily construed as a deliberate and willful absence. The explanation offered for non appearance before the trial Court appears to be justified and therefore, the same is accepted.

In view of the above, this Court finds that trial Court proceeded to pass the extreme order hastily, therefore, the impugned order dated 20.08.2019 is set aside and the complaint is restored to its original number.

It is directed that the trial Court shall proceed with the complaint case in accordance with law.

Let the complainant appear before the trial Court on 18.10.2019.

(MANOJ BAJAJ)
JUDGE

09.09.2019

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No