

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

**CRR No.151 of 2019 (O&M)
Decided on: 31.01.2019**

Dinesh Kumar

....Petitioner

Versus

Shamsher

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Deepak Vashishth, Advocate
for the petitioner.

Mr. K.S. Dhaliwal, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this revision petition is for setting-aside the order dated 11.10.2018 passed by the Additional Sessions Judge, Jind vide which the appeal filed by the petitioner against the judgment of conviction dated 11.12.2017 holding him guilty of offence punishable under Section 138 of the Negotiable Instruments Act (in short 'the NI Act') as well as the order of sentence awarding him simple imprisonment for a period of 01 year and to pay a fine of Rs.1.50 lacs, was dismissed on the ground that neither the petitioner nor his counsel was present before the Lower Appellate Court.

In pursuance to the notice of motion, Mr. K.S. Dhaliwal, Advocate has caused appearance on behalf of the respondent/complainant.

Counsel for the petitioner has submitted that in pursuance thereof, the petitioner surrendered before the trial Court on 19.11.2018

and he is in custody since then. It is further submitted that on the day when the impugned order was passed, the case was received by way of transfer and the Lower Appellate Court, instead of issuing notice to counsel for the appellant had straight-away opted to dismiss the appeal on the same day i.e. 11.10.2018. It is also submitted that since the petitioner has already surrendered there was no intention on his part not to appear before the Lower Appellate Court on the day when the case was transferred and assigned to the Court, which was dismissed on the same day.

Counsel for the respondent/complainant has not disputed the factual position.

After hearing the counsel for the parties, I find merit in the present revision petition noticing the fact that the case was received by way of transfer and the Lower Appellate Court, instead of issuing notice either to the appellant or his counsel, had straight-away opted to dismiss the appeal on the same day i.e. 11.10.2018 and also in view of the fact that since the petitioner has already surrendered before the trial Court there was no intention on his part not to appear before the Lower Appellate Court on the day when the case was transferred and assigned to the Court.

Accordingly, the order dated 11.10.2018 is set-aside and the case is remitted back to the Court of Additional District Judge, Jind for deciding the same on merits.

Considering the fact that the petitioner is in judicial custody since 19.11.2018, his sentence is suspended till 15.02.2019 subject to his furnishing bail/surety bonds to the satisfaction of the

Chief Judicial Magistrate/Illaqa Magistrate/Duty Magistrate, Jind.
However, it will be open for the Lower Appellate Court to pass afresh order on the application for suspension of sentence, in accordance with law.

The parties are directed to appear before the Lower Appellate Court on 11.02.2019.

(ARVIND SINGH SANGWAN)
JUDGE

31.01.2019
yakub

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