

CRM-M-56818 of 2018

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

CRM-M-56818 of 2018
Date of Decision: 21.02.2019

Smt. Poonam Sharma @ Poonam Kaushik

....Petitioner

Versus

Sanjay Pandey and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. S.K. Rana, Advocate,
for the petitioner.

Mr. Himanshu Chhabra, Advocate,
for respondents No.1 and 2.

RAMENDRA JAIN, J. (ORAL)

Memorandum of appearance on behalf of the respondents
filed in Court today is taken on record.

Through instant petition under Section 482 Cr.P.C. prayer
has been made for quashing impugned order dated 21.07.2017
(Annexure P-4) of the learned Sub Divisional Judicial Magistrate,
Kalka, dismissing the complainant of the petitioner under Section
138 of the Negotiable Instruments Act in default.

Learned counsel *inter alia* contends that dismissal of
complaint of the applicant by trial Court vide impugned order on
account of single default of non-appearance of petitioner or her
counsel, is disproportionate and harsh in view of the fact that
petitioner was appearing throughout on each and every date prior to

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that date.

After giving anxious thought to the submissions made by learned counsel for the petitioner, this Court is of the considered view that petitioner should not be condemned unheard inasmuch as duty of the Courts is to impart justice to the litigants and not to non-suit them on technical grounds. In the instant case, only on a single default of the petitioner or her counsel, her complaint was dismissed vide impugned order which is a very harsh step taken by the trial Court.

Considering overall facts and circumstances of the case, the impugned order dated 21.07.2017, is set aside subject to deposit of Rs.5,000/- as costs with the District Legal Services Committee, Panchkula. The trial Court is directed to proceed further with the complaint of the petitioner, in accordance with law, by restoring the same to its original number.

Respondents are directed to appear before the trial Court within 15 days from today, failing which their presence shall be procured through non-bailable warrants.

February 21, 2019
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No