

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

264

**CRM-M-10570-2018 (O&M)
Date of Decision: 21.02.2019.**

M/s Chopra Machinery & Mill Store

....Petitioner.

Versus

R.K. Coating System and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Ashwarya Bajaj, Advocate for the petitioner.

Shekher Dhawan, J.

Present petition under Section 482 Cr.P.C. is for setting aside the order dated 26.09.2017 (Annexure P2) passed by Judicial Magistrate Ist Class, Faridabad, whereby the complaint under Section 138 of the Negotiable Instruments Act (for short, 'the Act') was dismissed for non appearance of the petitioner-complainant and order dated 26.09.2017 (Annexure P3) passed by learned Judicial Magistrate Ist Class, Faridabad, whereby application filed for restoration of the said complaint was also dismissed.

Learned counsel for the petitioner contended that after filing of the present complaint in the year 2016, the petitioner had been regularly appearing before the Court and even on 26.09.2017, he was present in the Court and at the time of call of the case he had just gone out of the Court to call his counsel and meanwhile his complaint was dismissed. Thereafter, application for restoration was filed on the same date but the same was also dismissed.

Having considered the submissions made by learned counsel for the petitioner and appraisal of the record, it is evident that complaint was dismissed on 26.09.2017 on account of non appearance of the petitioner-complainant. However the version of the petitioner is specified that application for restoration was filed on 26.09.2017 itself, but learned Magistrate dismissed the same without any justified reason. There is nothing to presume that the petitioner was having any reason or justification not to appear and pursue his complaint under Section 138 of the Act after having been filed in the year 2016 for realization of amount of cheques for a sum of Rs.15,242/-, 12,000/- and 18,600/-. Learned Magistrate has failed to consider all these facts while dismissing the complaint on 26.09.2017 and thereafter, passing the order dated 26.09.2017 thereby dismissing the application for restoration of the complaint.

In view of the above, both the above said orders are set aside and trial Court is directed to restore the complaint at its original number and to proceed further with the same from the stage where it was pending.

Present petition is disposed of accordingly.

(SHEKHER DHAWAN)
JUDGE

21.02.2019

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