

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

CRM-M-14970-2017 (O&M)

Date of decision: 08.01.2020

Manoj Kumar Kinha

...Petitioner

Versus

Dinesh Kumar and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. J.P. Jangu, Advocate for the petitioner.

Ms. Divya Sharma, Advocate for the respondents.

H.S. MADAAN, J. (Oral)

A complaint under Section 138 of the Negotiable Instruments Act (for short 'the Act') filed by the complainant Manoj Kumar Kinha against accused Dinesh Kumar and another had been pending in the Court of Judicial Magistrate Ist Class, Gurugram. Accused was summoned and had put in appearance on 08.02.2017. Since, there was no representation on behalf of the complainant, learned Magistrate dismissed the complaint for non-prosecution.

Feeling aggrieved, the complainant has approached this Court by way of filing petition under Section 482 Cr.P.C., praying that the impugned order be set aside and the complaint be ordered to be restored.

Notice of the petition was given to accused, who have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the respondents/accused has contended that since as a result of dismissal of the complaint, the accused had been discharged, therefore, the remedy available to complainant was to file appeal under Section 378(4) Cr.P.C., and not to file petition under Section 482 Cr.P.C. In support of that contention, she has referred to judgment **Balbir Kaur Aujla Vs. Balraj Singh, 2006(2) RCR (Criminal) 650** by a single judge of this Court. She has further contended that the complaint was time barred and deserves to be dismissed.

On the other hand, learned counsel for the revisionist/complainant has contended that petition under Section 482 Cr.P.C. is maintainable. In support of his such submission, he has placed reliance upon authority **Om Parkash Vs. M/s Golden Forest India Ltd., 2008(4) RCR (Criminal) 445** by a single judge of this Court. He has further referred to judgment **Mohd. Azeem Vs. A. Venkatesh & Anr. 2003 Cri. L.R. (SC) 211** by the Apex Court wherein it was observed that when a complaint under Section 138 of the Act was dismissed for absence of the complainant on a single occasion and cause for absence was not disbelieved, acquittal of the accused was not justified.

After hearing learned counsel for the parties and going through the authorities referred to by them, I find that the complainant had filed a complaint in the Court for the reason that four cheques issued by the accused in his favour in the sum of Rs. 3 lacs each, on presentation

had been dishonoured on account of insufficient funds in the account of the accused. The complainant prosecuted the matter by leading evidence. Thereafter, the accused had been summoned. The matter was pending before the Trial Magistrate. On account of absence of complainant on one occasion dismissal of the complaint for non-prosecution was not justified, since, it is always desirable that a lis should be decided on merits, rather than, non-suiting the parties on technical grounds. The other objections with regard to complaint being time barred etc., would be looked into by the Trial Magistrate. I find that the present petition challenging the impugned order is maintainable and no fault can be found with the same. Therefore, the petition is accepted; impugned order is set aside and the complaint is ordered to be restored at its original number. The Trial Magistrate is directed to proceed with the complaint from the stage when it was dismissed for non-prosecution. The Registry is directed to send a copy of this order be sent to the concerned Court.

08.01.2020

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(H.S. MADAAN)
JUDGE

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