

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.221

Case No. : CRM-A-2692-MA-2017 (O&M)

Date of Decision : December 12, 2022

Suresh Chand		Appellant
vs.		
Parveen Kumar		Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Bhag Singh, Advocate
for the appellant.

None for the respondent.

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GURBIR SINGH, J. :

This appeal has been filed against the order dated 14.09.2017 passed by learned Sub Divisional Judicial Magistrate, Bilaspur, District Yamuna Nagar, in Criminal Complaint No.27, under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as – the Act).

Notice of the present appeal was given to the respondent but no one has appeared on behalf of the respondent.

The appellant filed a complaint under Section 138 of the Act against the respondent with the allegation that he borrowed a sum of Rs.2,60,000/- from the appellant and in discharge of his liability, issued a cheque amounting to Rs.2,60,000/- drawn on Indian Bank Branch, Yamuna Nagar, in favour of the appellant. On presentation, the same was dishonoured with the remarks “Insufficient Funds” vide memo dated

29.10.2011 and the intimation of the same was given to the appellant by his bank on 04.11.2013.

The appellant served a legal notice to the respondent on 08.11.2013 i.e. within a stipulated period, demanding the amount of cheque but the respondent failed to do so and the complaint was filed within limitation.

On the basis of preliminary evidence led by the appellant, the respondent was summoned under Section 138 of the Act. After summoning the respondent as an accused, the evidence of the appellant started and case was adjourned for cross-examination of the appellant for 14.09.2017 but counsel for the appellant noted the date as 18.09.2017 instead of 14.09.2017 and it was so conveyed to the appellant. Accordingly, when the appellant went to the Court on 18.09.2017, he was informed that his complaint was dismissed on 14.09.2017 for non-appearance of the appellant, which amounted to the acquittal of the respondent. It was further submitted that non-appearance of the appellant on 14.09.2017 was not intentional but was due to noting down wrong date and it was simply because of a small mistake on the part of the counsel for the appellant.

In support of his case, learned counsel for the appellant has relied upon two judgments of this Court i.e. **Hardev Singh vs. Ajay Arora** reported as **2017(1) L.A.R. 2017**, decided on 21.02.2017 and **Dharam Pal vs. Sukhdev Singh** reported as **2017 (2) RCR (Criminal) 71**.

In the facts and circumstances of the present case, I find that the impugned order dated 14.09.2017 passed by learned Sub Divisional Judicial Magistrate, Bilaspur, District Yamuna Nagar has caused

miscarriage of justice. If the impugned order is not set aside, the complainant (appellant herein) would suffer irreparable loss. It is the settled law that rights of the parties should be decided on merits as far as possible. The function of the Court is to do substantial justice between the parties.

Since the non-appearance on the part of the appellant was not intentional but due to the mistake of noting wrong date, the impugned order is too harsh. So, the impugned order dated 14.09.2017 passed by learned Sub Divisional Judicial Magistrate, Bilaspur, District Yamuna Nagar, dismissing the complaint filed by the appellant for non-prosecution, is hereby set aside and the complaint is ordered to be restored at the stage from where it was dismissed in default.

The Court below is directed to proceed further in accordance with law after giving notice to the parties concerned.

The appellant is directed to appear before the Court below on 17.01.2023. He is burdened with a cost of Rs.2,000/- to be deposited in the account of District Legal Services Authority.

December 12, 2022
monika

(GURBIR SINGH)
JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>