

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

**CRM-A-805-2019 (O&M)
Date of decision: 24.11.2022**

Inder Bhan

...Appellant

Versus

Lakhan Pal

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Tanmoy Gupta, Advocate
for the appellant.

None for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this application, filed under Section 378(4) Cr.P.C., is for granting leave to appeal against the order dated 21.12.2018, passed by the trial Court, vide which the complaint filed by the petitioner under Sections 138 of the N. I. Act read with Section 420 IPC was dismissed for non-prosecution.

Learned counsel for the applicant/complainant submits that the trial Court has dismissed the aforesaid complaint on account of non-appearance of the applicant/complainant on the said date when, after issuance of notice to the respondent/accused, the case was fixed for miscellaneous proceedings. It is further submitted that non-appearance of the applicant/complainant was due bad health of his mother, however, he has duly informed his counsel about the medical condition of his mother along with medical record but he could not apprise the trial Court about the

same, therefore, the complaint was dismissed for non-prosecution.

As noticed above, there is no representation on behalf of the respondents/accused, despite service.

After hearing learned counsel for the applicant/complainant and considering the fact that it is well settled principle of law that no body should be condemned unheard and also in view of the fact that the respondents/accused have chosen not to appear before this Court despite service, the present application is allowed and the impugned order dated 21.12.2018 is hereby set aside. The complaint filed by the applicant/complainant is ordered to be restored back to its original number and stage.

The applicant/complainant is directed to appear before the trial Court on 20.12.2022 and thereafter, the trial will proceed further and will be disposed of in accordance with law.

Considering the fact that the complaint was dismissed in the year 2018 for non-prosecution and it is being restored in 2022, therefore, in the event of passing a judgment of conviction against the respondents/accused, the trial Court will keep in its mind that for a period of about 04 years, the complaint remained dismissed for non-prosecution, hence, no penal action be taken against the applicant/complainant for the intervening period.

24.11.2022

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No