

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

CRM-A-2006 of 2019 (O&M)

Date of Decision:- 08.04.2022

M/s Chirag Electricals

....Appellant

Vs.

Ravinder Kumar and another

....Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. G.S. Sandhu, Advocate
for Mr. Parminder Singh, Advocate
for the petitioner.

KARAMJIT SINGH, J.(Oral)

CRM-24227 of 2019

Keeping in view the reasons mentioned in the application, the same is allowed and complaint under Section 138 of Negotiable Instruments Act is taken on record as Annexure P-1 subject to all just exceptions.

CRM-A-2006 of 2019

This is an application filed under Section 378(4) Cr.P.C. for grant of special leave to appeal against order dated 23.01.2019 passed by Ld. Judicial Magistrate 1st Class, Karnal.

I have heard the counsel for the applicant and perused the impugned order.

The application is allowed.

Leave to appeal Granted.

Office is directed to assign appeal number to the case.

The appellant has challenged the order dated 23.01.2019 passed by Ld. Judicial Magistrate 1st Class, Karnal vide which the complaint filed by the appellant titled M/s Chirag Electricals through its proprietor Versus Ravinder Kumar. Proprietor M/s Gulati Traders under Section 138 Negotiable Instruments Act, has been dismissed in default for want of prosecution.

The counsel for the appellant argued that on the basis of preliminary evidence led by the complainant/appellant, the accused-respondent was summoned by the Trial Court. The case was fixed for 23.01.2019 for summoning of accused/Respondent on filing of copy of the complaint by the appellant/complainant. However, appellant mistook the date as 22.02.2019. Due to the said reason, appellant failed to appear in the trial court on 23.01.2019 and consequently the impugned order was passed. The counsel further contended that non-appearance of the appellant or his counsel in the trial court on the date fixed was neither intentional nor willful but the same has happened as the appellant noted wrong date. The counsel further contended that earlier to 23.01.2019, the appellant was regularly appearing in the trial court.

Admittedly, the appellant had not gained anything by remaining absent on the date fixed in the trial Court. There is nothing

to show that there was any mala fide intention on the part of the appellant for his absence from the proceedings before the trial court on the date fixed. Nothing is available on record to show that previously also the appellant defaulted in the similar manner. So there was only single default on the part of the appellant, on account of which the complaint filed by him under Section 138 Negotiable Instruments Act, dismissed by the trial court for want of prosecution. The absence of the appellant on one date in the complaint case is no ground to dismiss the complaint. ***The Hon'ble Apex Court in Mohd. Azeem Versus A. Venkatesh and another (2002) 7 SCC 726*** has held that one singular default in appearance on the part of complainant, dismissal of complaint is not proper.

Therefore, from the above, I find merit in this appeal and the same is allowed. The impugned order passed by Judicial Magistrate 1st Class, Karnal dated 23.01.2019 dismissing the complaint is set aside subject to cost of Rs.5000/-to be deposited by the appellant with the District Legal Services Authority, Karnal and further to comply with the directions given by Trial Court on the last date preceding to 23.01.2019, within a period of 30 days from today. The complaint is ordered to be restored at the stage from where it was dismissed by the trial court. The Trial Court is directed to proceed further as per law.

The appellant is directed to appear before the Trial Court within next 30 days from today.

08.04.2022

P. Chawla

(KARAMJIT SINGH)

JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No