

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

276

CRA-AS-49-2022 (O&M)
Date of Decision: 05th April, 2022

KAMALJIT LAL

... Appellant

Versus

KUNDAN LAL

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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

Mr. Vikram Bali, Advocate
for the respondent.

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VINOD S. BHARDWAJ, J. (ORAL)

The instant appeal has been filed by the complainant aggrieved of the order dated 09.07.2019 passed by the Judicial Magistrate Ist Class, Garhshankar, vide which the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881 has been dismissed in default on account of non-appearance of the complainant parties/appellant.

Learned counsel appearing on behalf of the appellant has pointed out that the complaint on account of dishonour of cheque to the tune of Rs.1,00,000/- was instituted by the appellant on 25.01.2018, when the summons were issued to the respondent/accused. Thereafter, the case in question was listed for nearly 15 days for appearance of the accused and that the complainant had appeared on all such dates before the Trial Court. The counsel contends that on 01.07.2019, the appellant was present in the Court till the first half of the day, however, the respondent/accused had not

turned up till then, as a result whereof, the date noted by him was 15.07.2019. The said brief was also noted by the counsel. Photocopies of extract to the diary of the Advocate dated 01.07.2019; 09.07.2019 and 15.07.2019 have been appended by him with the instant appeal. In addition thereto, he has also appended and placed reliance upon the brief (cover note) to substantiate the said submissions. He submits that in the second half of the day, the respondent/accused appeared alongwith his counsel and was admitted to bail. At that point of time, the date recorded in the order is 09.07.2019. He pointed out that it was on account of noting a wrong date that he could not appear before the Court on the date fixed i.e. 09.07.2019. He argues that his absence was inadvertent and merely on account of a wrong date having been noted, and that the belief of the appellant was bona fide. He strenuously argued that the mere fact that the appellant remained present on all the dates fixed before the Trial Court, clearly shows that the appellant had been sanguine about his case and had been diligently pursuing the same without any default. His conduct does not show any negligence or reflect any deliberate intent to delay the proceedings before the Trial Court. Besides, the appellant does not stand to gain anything by non-appearance in the said matter.

On the other hand, learned counsel appearing on behalf of the respondent/accused has opposed the appeal by placing reliance upon the order dated 01.07.2019 which marks the presence of the appellant alongwith his counsel and date in question has been specifically noted as 09.07.2019. He, thus, contends that the Court record has to be given due sanctity and it cannot be deemed to be falsified merely on account of the averments made

by the appellant in the instant appeal. He placed reliance upon the judgment dated 17.03.2009 of this Court passed in the matter of **Hardevinder Singh and another Vs. Smt. Nirmal Kaur and others** bearing **CR No.6951 of 2008.**

I have heard the learned counsel for the respective parties and have gone through the record.

There is, of course, no iota of doubt that there is a sanctity attached to the record of Court and the proceedings so recorded therein have to be accepted due to the presumption being attached to it. However, the same in no manner dispels the fact that the complainant/appellant was under the wrong impression that the next date of hearing was 15.07.2019 instead of 09.07.2019. The aforesaid error has not been attributed by the appellant to the Court, but, to his counsel as having informed the appellant about the next date of hearing.

It is also averred that the appellant had been diligently pursuing his case before the Trial Court. An isolated event of failure to appear before the Court cannot be perceived as terminal enough to foreclose the remedies available to the appellant. In my opinion, it would be a travesty of justice in case the order in the nature of dismissal of the complaint in default is allowed to be sustained on every similar event of failure on the part of the complainant to appear before the Court.

Having considered the same, I am of the opinion that order dated 09.07.2019 passed by the Judicial Magistrate Ist Class, Garhshankar is liable to be set aside. The instant appeal is allowed accordingly.

The order dated 09.07.2019 passed by the Judicial Magistrate

Ist Class, Garhshankar is set aside and the complaint in question is ordered to be restored at its original number. Parties are directed to appear before the Trial Court concerned on 05.05.2022.

(VINOD S. BHARDWAJ)
JUDGE

05.04.2022

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Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*