

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

**CRM-M-44682-2017
Date of Decision:- 19.4.2022**

PARMOD KUMAR

....Appellant

Vs.

VIJAY KUMAR

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Salil Dev Singh Bali, Advocate
for the petitioner.

KARAMJIT SINGH, J.(Oral)

The petitioner has challenged the order dated 26.9.2017 (Annexure P-6) passed by the Sub-Divisional Judicial Magistrate, Siwani, whereby the complaint (Annexure P-1) was dismissed in default.

The counsel for the petitioner/complainant argued that on the basis of preliminary evidence led by the petitioner/complainant, the accused-respondent was summoned by the trial Court. The case was fixed for 26.9.2017 for summoning of accused/respondent throughailable warrant. However, appellant mistook the date as 16.10.2017 instead of 26.9.2017. Due to the said reason, petitioner failed to appear in the trial court on 26.9.2017 and consequently the impugned order was passed. The counsel further

contended that non-appearance of the petitioner or his counsel in the trial Court on the date fixed was not intentional or willful but the same has happened as the petitioner noted wrong date. The counsel further contended that earlier to 26.9.2017, the petitioner was regularly appearing in the trial court.

Admittedly, the petitioner 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 petitioner 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 petitioner defaulted in the similar manner. So there was only single default on the part of the petitioner, on account of which the complaint filed by him under Section 138 Negotiable Instruments Act, dismissed by the trial court for want of prosecution. No one was prejudiced due to non-appearance of the complainant or his counsel on the date fixed i.e. 26.9.2017 as the case was fixed only for appearance of the respondent-accused throughailable warrant, on that date. However from the perusal of the impugned order it transpires that none appeared even on behalf of the respondent-accused on that date. Further the absence of the petitioner 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 petition and the same is allowed. The impugned order passed by Sub-Divisional Judicial Magistrate, Siwani dated 26.9.2017 (Annexure P-6) dismissing the complaint is set-aside subject to cost of ₹5,000/- to be deposited by the petitioner with the District Legal Services Authority, Bhiwani. The complaint (Annexure P-1) 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 petitioner is directed to appear before the trial Court within next 30 days from today.

19.4.2022
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No