

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

**CRM-M No.46610 of 2018
Date of Decision:- 23.05.2022**

Rajeev Singh

....Petitioner

Vs.

Vikrant Krishan Nigam

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Manish Soni, Advocate
for the petitioner.

KARAMJIT SINGH, J.(Oral)

Petitioner has filed the present petition for setting aside of order dated 20.02.2018 passed by JMIC, Gurugram, Annexure P-4, whereby Criminal Complaint No.138/20707/2017 dated 27.04.2017 titled as “Rajeev Singh Versus Vikrant Krishan Nigam” under Section 138/142 of Negotiable Instruments Act has been wrongly and arbitrary dismissed in default for want of prosecution and further made prayer that aforesaid criminal complaint be restored at its original position.

The counsel for the petitioner argued that the aforesaid complaint was fixed for preliminary evidence, when the impugned order was passed. The counsel for the petitioner further argued that at that time the petitioner was lodged in custody in one criminal case

No.232 dated 7.6.2016 under Section 406, 420, 467, 468, 471, 120-B IPC Police Station Sushant Lok and was released on bail vide order dated 7.6.2018, Annexure P-2. The counsel further contends that the absence of the petitioner in the trial Court on 20.02.2018 was not intentional.

I have considered the aforesaid assertions made by the counsel for the petitioner.

The impugned order is reproduced herein below:-

“Present: None.

Today case was fixed for preliminary evidence. Perusal of file shows that complaint was filed on 27.04.2017. Thereafter, 8 opportunities have been availed by the complainant for leading preliminary evidence. On 6 dates exemption application has been filed on behalf of complainant. On 01.07.2017 no one came present on behalf of complainant. Instead of dismissing the complaint court notice was issued to the File be consigned to record room after due compliance.

Announced.

Sd/-

20.02.2018

JMIC/Gurugram/UID No.HR0437”

The criminal complaint filed by the petitioner was dismissed in default at pre-summoning stage. So there is no need to issue the notice of the present petition to the respondent/accused.

From the perusal of Annexure P-2, it appears that at the time of passing of impugned order, the petitioner was in custody since 1.8.2017 in some other case and was granted bail on 7.6.2018 in the said case. So it appears that the petitioner failed to appear before the trial Court due to genuine reason as he was detained by the police in some other criminal case, on the date fixed i.e. 20.02.2018.

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. 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.

In the light of the above discussion, I find merit in this petition and the same is allowed. The impugned order passed by Judicial Magistrate 1st Class, Gurugram, 20.02.2018, Annexure P-4, dismissing the complaint for want of prosecution is hereby set aside

subject to cost of Rs.5000/-to be deposited by the petitioner with the District Legal Services Authority, Gurugram. The petitioner is directed to appear before the Trial Court on 08.06.2022..

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 from that stage, as per law.

23.05.2022

P. Chawla

**(KARAMJIT SINGH)
JUDGE**

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No