

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-28780-2019
Date of decision : 29.10.2022

The Nawanshahr Central Co-operative Bank Ltd. Nawanshahr

... Petitioner

Versus

Santokh Singh

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Ms.Sarika Gupta, Advocate
for the petitioner.

None for the respondent.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 482 Cr.P.C. for quashing of impugned order dated 22.04.2019 passed by the Judicial Magistrate Ist Class, Nawanshahr in criminal complaint no.NACT 528/2017 dated 16.11.2017 titled as “The Nawanshahr Central Co-operative Bank Ltd. vs. Santokh Singh” filed under Section 138 of the Negotiable Instruments Act, 1881 (in short “N.I.Act”).

Learned counsel for the petitioner has submitted that the petitioner had filed a complaint under Section 138 of the N.I. Act against the respondent for dishonour of cheque dated 30.10.2017 of an amount of Rs.1,85,000/- and was regularly appearing before the trial Court and on several dates, it is the respondent-accused who had not appeared and only on one date, i.e. 22.04.2019, the petitioner did not appear when the trial Court had dismissed the case in default. It is submitted that the petitioner

could not appear on the said date as clerk of the counsel had noted the wrong next date as 07.05.2019 instead of 22.04.2019. In support of her arguments, learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in *Mohd Azeem vs. A.Venkatesh and Another* reported as **2002(7) SCC 726** as well as the judgment of coordinate Bench of this Court in *Sardar Singh vs. Gian Chand* reported as **2015(8) RCR (Criminal) 567**.

A perusal of the report of the Registry would show that the respondent was served, however, none has appeared on behalf of the respondent.

This Court has heard learned counsel for the petitioner and has perused the paper book.

The petitioner had filed a complaint under Section 138 of the N.I. Act against the respondent for dishonour of cheque of an amount of Rs.1,85,000/-. On 09.01.2018, the Judicial Magistrate Ist Class after considering the documents on record and preliminary evidence was pleased to summon the accused for trial and on 10.05.2018 the respondent had appeared. On 24.09.2018, 19.01.2019 and 11.03.2019 although the complainant was present but the accused was not present. The said orders are reproduced hereinebelow:-

*“Present: Complainant with counsel Sh.SK Sareen Adv.
Accused absent.*

*Case called several times since morning neither the accused nor anyone has appeared on his behalf. It is already 3:30 PM.
Now Court notice to accused be issued for 20.10.2018.*

Date of order: 24.09.2018

*(Lavleen Sandhu)
Judicial Magistrate Ist Class
Shaheed Bhagat Singh Nagar*

*Present: Sh.SK Sareen Adv. counsel for complainant.
Accused not present.*

Ld.Presiding Officer is on leave. File put up before me being Duty Magistrate. Today accused has not come present in the Court. Let notice to accused be issued for 11.03.2019.

*Date of order: 19.01.2019 (Yukti Goel)(Minakshi)
CJM/Duty
Shaheed Bhagat Singh Nagar*

xxx xxx xxx

*Present: Sh.SK Sareen Adv. counsel for complainant.
Accused not present.*

Notice to accused not issued by the Ahlmad. He is warned to be careful in future. Let fresh notice to accused be issued for 29.03.2019.

*Date of order: 11.03.2019 (Lavleen Sandhu)
Judicial Magistrate Ist Class
Shaheed Bhagat Singh Nagar*

On 11.04.2019 the matter was adjourned to 22.04.2019 and even on 11.04.2019 the counsel for the complainant was present. On 22.04.2019 the impugned order dismissing the complaint of the petitioner in default was passed on account of non-appearance of counsel for the complainant and the complainant. It is apparent from the said zimni order as well as the impugned order that the complainant had not appeared only on one date i.e., 22.04.2019. It is the case of the petitioner that on 11.04.2019 the clerk of the counsel had informed the wrong date to the complainant as 07.05.2019 instead of 22.04.2019 and it was on account of the said fact that the complainant did not appear.

The Hon'ble Supreme Court in **Mohd.Azeem's** case (supra) has held as under:-

“3. From the contents of the impugned order of the High Court, we have noticed that there was one singular default in appearance on the part of the complainant. The learned Judge of the High

Court observes that even on earlier dates in the course of trial, the complainant failed to examine the witnesses. But that could not be a ground to dismiss his complaint for his appearance on one single day. The cause shown by the complainant of his absence that he had wrongly noted the date, has not been disbelieved. It should have been held to be a valid ground for restoration of the complaint.

4. In our opinion, the learned Magistrate and the High Court have adopted a very strict and unjust attitude resulting in failure of justice. In our opinion, the learned Magistrate committed an error in acquitting the accused only for absence of the complainant on one day and refusing to restore the complaint when sufficient cause for the absence was shown by the complainant.

5. The impugned orders dated June 22, 2001 of the Metropolitan Magistrate and dated July 24, 2001 of the High Court respectively, are set aside. The complaint is restored and the learned Magistrate is directed to proceed with the trial of the case after issuance of formal notices to both the parties of the next date to be fixed in the case. The learned counsel appearing for the parties are directed to inform the parties to appear before the Court of the Metropolitan Magistrate on or before September 9, 2002, to ascertain the date fixed by the trial Judge for the case.”

A perusal of the above would show that in the said case also, the complaint was dismissed for non-appearance of the complainant on account of one singular default in the appearance and the said order was upheld by the High Court and when the matter came up before the Hon'ble Supreme Court, both the orders were set aside and the complaint was restored to its original number and the Magistrate was directed to proceed with the trial after issuance of formal notices to both the parties.

A coordinate Bench of this Court in ***Sardar Singh's*** case (supra) has held as under:-

“.....The perusal of record also reveals that the complainant had been regularly appearing before the Court on each date of hearing, except on 24.03.2014, when the complaint was dismissed for want of prosecution. A very hyper-technical and

pedantic approach had been adopted by the Court below by dismissing the complaint only for a single default. The complainant was diligently pursuing his remedies. He has given an explanation. There was no reason why the complainant would stop pursuing his case. It is a complaint involving dishonour of cheque. It is always in the interest of justice that the case should be adjudicated on merits. In Mohd. Azeem Vs. A. Venkatesh & Anr., 2002(7) SCC 726, the Hon'ble Apex Court had held that the complaint ought not to have been dismissed by the Court on account of single default on the part of the complainant. The order passed by the court below seems to be harsh, especially when the case was only fixed for presence of accused.

6. *The instant appeal is allowed and the order dated 24.03.2014 passed by the learned Magistrate dismissing the complaint of the appellant in default, is set aside subject to the JITEN SHARMA 2015.09.23 15:13 I attest to the accuracy and authenticity of this document High Court Chandigarh condition that there shall be no further default on the part of the complainant. The matter is remitted back to the trial court with a direction to restore the complaint to its original number and then to further proceed with the case from the stage, where it was dismissed. The complainant, through its counsel, is directed to appear in the trial Court on 08.10.2015.”*

A perusal of the above order would show that it was observed that dismissing the complaint on account of single default approach of the trial Court, was a hyper-technical and pedantic approach moreso, when the complainant had been pursuing his remedies diligently and there was no reason why the complainant would stop pursuing his case in which he had filed a complaint regarding the dishonour of cheque and the order was accordingly, set aside.

This Court is of the view that the order dated 22.04.2019 dismissing the complaint of the petitioner in default only on a singular default of non-appearance, is harsh and the reason given by the petitioner

as the complainant had been pursuing the complaint diligently and was appearing regularly before the trial Court prior to the passing of the impugned order and had filed the present petition immediately after passing of the impugned order.

Keeping in view the above said facts and circumstances and the law discussed in the above said judgments, the impugned order dated 22.04.2019 is set aside and the matter is remitted back to the trial Court with the direction to restore the complaint to its original number and then to proceed further with the case from the stage at which it was dismissed in default and the complainant through his counsel is directed to appear before the trial Court on 09.11.2022 at 11:00 AM.

(VIKAS BAHL)
JUDGE

October 29, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No