

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

CRM-A-2271-2019
Date of Decision:-15.03.2022

VINOD KUMAR

... Petitioner

Versus

SATISH KUMAR

... Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Pankaj Kaushik, Advocate
for the petitioner.

KARAMJIT SINGH, J. (Oral)

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

Present petition has been filed by the petitioner for setting aside
the order dated 9.7.2021 Annexure P-1 passed by the Court of learned
Judicial Magistrate Ist Class, Kurukshetra whereby the criminal complaint
filed by the petitioner titled Vinod Kumar vs. Satish Kumar under Section
138 of Negotiable Instruments Act was dismissed in default at the stage of
appearance of the respondent-accused on the ground that the
petitioner/complainant failed to furnish the correct address of respondent-

accused and he himself was also absent on that date and consequently the complaint was dismissed in default due to non-prosecution.

Notice of the present petition is not required to be issued to the respondent, as the aforesaid complaint was dismissed for want of prosecution only at the stage of appearance of the respondent. So the service of respondent in the present petition is hereby dispensed with.

The counsel for the petitioner submitted that the fresh address of the respondent was not available and the petitioner was trying to trace out the same. It is further contended that the absence of the petitioner before the trial Court on 9.7.2019 was not intentional. The counsel for the petitioner further contended that in these circumstances there are sufficient grounds to restore the criminal complaint in question which was dismissed in default on 9.7.2019 by the trial Court.

I have considered the submissions made by the counsel for the petitioner.

The aforesaid complaint was filed by the petitioner with regard to dishonour of cheque worth ₹55,000/- which was stated to have been issued by the respondent in favour of the petitioner in discharge of his legal liability.

It is the case of the petitioner that there was no intention on his part to abstain from appearing in the trial Court. It is also the plea of the petitioner that he was trying to trace out the correct address of the respondent, when the impugned order was passed by the trial Court.

This Court is of the view that dismissal of the complaint, be it for whatever reason, has resulted into miscarriage of justice and the trial Court does not have the power to restore the said complaint.

In view of the above, the present petition deserves to be allowed in the interest of justice. Accordingly the present petition is allowed and the impugned order is set aside. The complaint titled as Vinod Kumar vs. Satish Kumar under Section 138 of Negotiable Instruments Act (NACT No.2017) is hereby ordered to be restored at its original number by the trial Court. However, it is made clear that the petitioner is to furnish the correct address of the respondent to the trial Court or to submit affidavit in this regard within 15 days of the receipt of the certified copy of this order by the said Court, failing which the present petition shall be deemed to have been dismissed.

(KARAMJIT SINGH)
JUDGE

15.03.2022
Gaurav Sorot

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