

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

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CRM-M-15756-2023

Decided on : March 29, 2023

M/s Kesho Ram Pashupati Nath

..... Petitioner

Versus

Sukhpal Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Lupil Gupta, Advocate
for the petitioner.

NAMIT KUMAR, J. (Oral)

The present petition has been filed under Section 482 of Cr.P.C. for quashing of order dated 03.03.2020 (Annexure P-6) passed by learned Judicial Magistrate Ist Class, Bathinda, whereby the complaint bearing CIS No.COMA-3467-2019 dated 10.10.2019 (Annexure P-1) titled as “*M/s Kesho Ram Pashupati versus Sukhpal Singh*”, under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act') filed by the petitioner has been dismissed in default for want of prosecution as well as the order dated 27.07.2022 (Annexure P-8) passed by Judicial Magistrate Ist Class, Bathinda, whereby the application filed by the petitioner for restoration of the abovesaid complaint has also been dismissed.

Brief facts of the case are that the petitioner filed a complaint under Section 138 of the Act against the respondent with the averments that the respondent in order to discharge his legal liability, issued Cheque No.005315 dated 19.08.2019 for Rs.2,23,489.82/- drawn on Federal Bank, Bathinda out of his

Account No.21330100003538 in favour of the petitioner, which was dishonoured on account of "Funds Insufficient" vide Bank memo dated 20.08.2019. It was further alleged that the legal notice dated 27.08.2019 was sent to respondent on 30.08.2019 and the same was received by him but he did not make the payment despite notice. Thereafter, the petitioner filed a complaint under Section 138 of the Act before the court of learned Judicial Magistrate Ist Class, Bathinda and the same was fixed for recording preliminary evidence on 07.11.2019 but on the said date of hearing, the petitioner due to some business engagements and unavoidable circumstances could not appear before the trial court and consequently, the complaint has been dismissed in default by the trial Court vide impugned order dated 03.03.2020 (Annexure P-6) due to non-appearance of the petitioner. Aggrieved against the aforesaid order, the petitioner moved an application for restoration of the complaint, which was dismissed in default, but the same was also dismissed, being devoid of any merits, by the trial Court vide impugned order dated 27.07.2022 (Annexure P-8). Hence, this petition.

Learned counsel for the petitioner contends that dismissal of complaint of the petitioner by trial Court vide impugned order dated 03.03.2020 on account of single default of non-appearance, is disproportionate and harsh in view of the fact that petitioner or his counsel was appearing throughout on each and every date prior to the date of passing of the impugned order.

Heard learned counsel for the petitioner and perused the record.

In view of the given nature of the petition and submissions made by learned counsel for the petitioner, this Court is not inclined to issue notice to the respondent-accused at this stage, since the same will only lead to an unwanted exercise of engaging a counsel on his behalf and unnecessarily bear a burden *qua* payment of fee etc. to the counsel, therefore, the requirement of issuing a notice to

the respondent-accused is dispensed with. Moreso, in original complaint, the trial court has not issued notice to the accused as yet, as the case was at the stage of preliminary evidence to be brought by the petitioner-complainant.

This Court is of the considered view that petitioner should not be condemned unheard inasmuch as duty of the Courts is to impart justice to the litigants and not to non-suit them on technical grounds. In the instant case, only on a single default of the petitioner or his counsel, his complaint was dismissed in default vide impugned order which is a very harsh step taken by the trial Court.

The Hon'ble Supreme Court in ***Mohd. Azeem v. A. Venkatesh and another, (2002) 7 Supreme Court Cases 726*** has held that one singular default in appearance on the part of the complainant cannot be made a ground to dismiss the complaint. In the said judgment it was observed as under: -

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“ 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.”

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A Co-ordinate Bench of this Court in *CRM-36522-M of 2006 – Purushotam Mantri v. Vinod Tandon alias Hari Nath Tandon, decided on 30.01.2008* has held that merely for non-appearance on one date, the complaint cannot be dismissed as the Courts are not to dispense justice with closed eyes. To the same effect are the judgments of this Court in *CRM-A-441-MA of 2013 – M/s Jindal Petro v. A.K. Bhutani decided on 12.02.2014; Crl. Appeal No.AS-130 of 2015 – Nirmal Singh v. Dawarka Nath Sharma decided on 05.10.2015; CRM No.540 of 2010 – Standard Corporation India Limited v. Kamblekar Ramesh decided on 04.02.2011* and *Crl. Appeal No. AS-92 of 2015 – Sardar Singh v. Gian Chand decided on 21.09.2015.*

Considering overall facts and circumstances of the case, there was no justification to dismiss in default the complaint filed by the petitioner on account of his non-appearance. Consequently, impugned orders dated 03.03.2020 and 27.07.2022 passed by the Judicial Magistrate Ist Class, Bathinda are set aside and the complaint is restored to its original number subject to deposit of Rs.10,000/- as costs with the District Legal Services Authority, Bathinda, by the petitioner within three weeks from the date of passing of this order. The petitioner is directed to appear before the trial Court on 24.04.2023.

The instant petition stands disposed of, accordingly.

March 29, 2023
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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*