

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

CRA-AS-285-2023

Date of decision: 10.05.2023

Pawan Singh

...Appellant

Versus

M/s Panditji Tempo Service & another

...Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Ashish Yadav, Advocate for the appellant.

Mr. S.K. Tripathi, Advocate for respondents.

NAMIT KUMAR, J. (ORAL)

1. Through this application under Section 378(4) Cr.P.C prayer has been made for grant of special leave to file appeal against order dated 26.09.2016, of trial Court, whereby complaint under Sections 138 & 142 of the Negotiable Instruments Act, 1881 (for short 'the Act') read with Section 420 IPC, filed by applicant was dismissed in default, on account of his non-appearance.

2. Vide order dated 10.05.2018, notice was issued to the respondents. Leave to appeal under Section 378(4) Cr.P.C. is granted. The appeal be registered by the registry by allocating number to this case.

3. Brief facts of the case are that the appellant filed a complaint under Section 138 of Act against respondent Nos.1 and 2 with the averments that the appellant and respondents are known to each other and in order to improve domestic needs and upliftment of business respondent requested the appellant for friendly loan for a very short duration and promised that he will return the same immediately on the asking of the appellant within a period of six months.

That being cordial relations between them appellant had given a sum of Rs.1,20,000/- to the respondent on 10.06.2014. Thereafter, in order to liquidate

the liability respondent No.2 had issued an advance/post dated cheque for the payment of loan i.e. Cheque No.252268 dated 13.12.2014, drawn on Indian Bank, Khandsa Road, Gurgaon in favour of the appellant and respondent No.2 assured that the cheque will be honoured on presentation in the bank. The appellant presented the above said cheque through his banker Oriental Bank of Commerce, Branch Manesar, Gurgaon but the said cheque was dishonoured on account of "Insufficient Funds" vide bank return memo dated 02.01.2015. It was further alleged that the legal notice was sent to respondent No.2 on 06.01.2015 and the same was received by respondent No.2 but he did not make the payment despite notice. The appellant filed complaint under Section 138/142 of the Negotiable Instruments Act, 1881 read with Section 420 of IPC, 1860, which has been dismissed in default by the trial Court vide impugned order dated 26.09.2016 due to non-appearance of the appellant. Hence, this appeal.

4. Learned counsel for the appellant contends that dismissal of complaint of the appellant by trial Court vide impugned order dated 26.09.2016 on account of single default of non-appearance, is disproportionate and harsh in view of the fact that appellant was appearing throughout on each and every date prior to that date. He further submits that the impugned order has been passed on account of non-appearance of the appellant on 26.09.2016 whereas the matter had already been compromised and the respondents have also made payment of Rs.24,000/- as is clear from the order dated 02.09.2016 (Annexure A-2) passed by Ld. JMIC, Gurgaon. Therefore, the impugned order dated 26.09.2016 is totally erroneous and perverse.

5. After giving anxious thought to the submissions made by learned counsel for the appellant, this Court is of the considered view that appellant 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 appellant or his counsel, his complaint was dismissed in default vide impugned order dated 26.09.2016 which is a very harsh step taken by the trial Court.

6. The Hon'ble Supreme Court in ***Mohd. Azeem Vs. 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: -

“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.”

7. A Co-ordinate Bench of this Court in ***CRM-36522-M of 2006 – Purushotam Mantri Vs. 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.***

8. Considering overall facts and circumstances of the case and the fact that the matter had already been compromised and the respondents have also made payment of Rs.24,000/- as is clear from the order dated 02.09.2016 (Annexure A-2) passed by the Ld. JMIC, Gurgaon, there was no justification to dismiss the complaint filed by the appellant on account of non-appearance of the complainant on single date. Consequently, impugned order dated 26.09.2016 is set aside and the complaint is restored to its original number. Parties are directed to appear before the trial Court on 29.05.2023. The instant Criminal Appeal stands disposed of, accordingly.

10.05.2023

Parveen kumar

**(NAMIT KUMAR)
JUDGE**

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