

CRA-AS-401-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 04.09.2023

Rajinder Kumar

....Appellant

V/s

Inderjit

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Vaneet Thakur, Advocate for the appellant.

None for the respondent.

ARUN MONGA, J. (Oral)

Leave to appeal was granted vide order dated 01.09.2023.

2. Appeal herein is to challenge the order dated 31.01.2017 passed by Judicial Magistrate 1st Class, Hoshiarpur whereby complaint filed by appellant against respondent-accused for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act'), was dismissed for non-appearance of complainant and also for non-depositing of costs and process fee.

3. Succinct facts of the present case are that respondent-accused took a friendly loan from the appellant-complainant. In order to discharge his liability, respondent issued a cheque No.309166 dated 19.02.2016 for an amount of Rs.4 lakh drawn on Punjab Gramin Bank, Jalandhar Road, Kapurthala. On presentation, it was returned vide memo dated 28.01.2016 with the remarks "Insufficient Funds". Appellant served a legal notice dated 03.02.2016, however, despite this, respondent failed and neglected to make payment to the appellant.

4. Learned counsel for the appellant submits that vide order dated 23.03.2016, respondent was summoned to face trial for commission of offence punishable under Section 138 of the NI Act, for 21.05.2016 on filing of copy of

complaint and process fee etc. On 21.05.2016, complaint in question was transferred to the Court of learned JMIC, Hoshiarpur and summons could not be sent for want of process fee and copy of complaint. Learned JMIC directed the appellant to furnish necessary process fee for service of respondent through Buy Now Pay Later (BNPL) process for 18.08.2016. On 18.08.2016, notice was not issued and a fresh notice for 20.10.2016 was issued through BNPL process.

4.1. Learned counsel further contends that in compliance of order dated 21.05.2016, appellant had deposited Rs.88/- on 29.09.2016 vide receipt No.1754 and also the copy of complaint and process fee. He also contends that though on 18.08.2016, fresh notices were ordered to be issued and appellant had already deposited BNPL charges on 29.09.2016, but learned JMIC without going through earlier order dated 18.08.2016 wrongly observed in the order dated 20.10.2016 that RC/AD not filed and had granted last opportunity to furnish the same within a week and issued fresh notice to respondent for 05.01.2017 (wrongly written as 05.01.2016 in zimni order), subject to costs of Rs.200/- payable to DLSA.

4.2. Learned counsel further argues that since 05.01.2017 was declared as Holiday, the matter was taken up on 06.01.2017 and learned JMIC again committed a mistake and ordered to issue fresh notice through cover and BNPL for 31.01.2017, subject to additional costs of Rs.300/- payable to District Legal Services Authority (DLSA).

4.3. Learned counsel further urges that in fact, two complaints under Section 138 of NI Act were filed by appellant, one titled "*Rajinder Kumar versus Inderjit*" and another "*Rajinder Kumar versus Davinder Kumar*". Earlier complaint was listed on 06.01.2017 and the latter one was adjourned to 02.03.2017. Since both complaints were being listed together on one date, counsel for appellant, by mistake noted the next date of hearing, in the instant case also as 02.03.2017.

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4.4. Learned counsel submits that vide impugned order dated 31.01.2017, when the instant complaint i.e., “*Rajinder Kumar versus Inderjit*” was listed, the same was dismissed under Section 256 Cr. P.C. for non-appearance of complainant and also under Section 204(4) of Cr. P.C. for non-depositing of costs and process fee. The non-appearance on 31.01.2017 was unintentional due to noting down wrong date of hearing.

5. Despite publication, respondent did not come forward and on that premise, application seeking leave to appeal was allowed on 01.09.2023 and registry was directed to list the appeal.

6. I have heard learned counsel for the appellant and perused the case file.

7. It is borne out from the record that the impugned order was passed in the absence of the complainant. Complainant has given plausible explanation for his non-appearance. This Court finds the explanation to be cogent, therefore, the appeal is allowed and impugned order dated 31.01.2017 passed by learned Judicial Magistrate 1st Class, Hoshiarpur, is set aside. Complaint is revived to its original number and stage. Appellant is directed to appear before learned Court below on 03.10.2023 for further proceedings.

8. Needless to say, proceedings before learned Court below to commence/continue, in accordance with law.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 04, 2023
Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No