

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

CRA-AS-32-2015 (O&M)
Date of decision: 18.01.2024

Kulwant SinghAppellant

Versus

Santokh Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Daljit S. Batth, Advocate
for the appellant.

None for the respondent.

HARPREET SINGH BRAR, J.

1. The present appeal has been preferred against the order dated 11.07.2011 passed by learned Judicial Magistrate 1st Class, Chandigarh vide which the complaint bearing No. 399 of 2008 filed under Section 138 of Negotiable Instruments Act, 1881 (herein after referred as NI Act) was dismissed in default.

2. Learned counsel for the appellant *inter alia* contends that the appellant had been regularly appearing before the learned trial Court and he had concluded and closed his evidence on 23.05.2011 and the case was adjourned to 11.07.2011 for recording the statement of the respondent under Section 313 Cr.P.C. It is further submitted that the counsel for the appellant in the trial Court noted the wrong date, i.e., 03.09.2011 and due to this wrong noting of the next date neither the appellant nor his counsel appeared before the court on the actual date, i.e., 11.07.2011 and as such in the absence of the appellant or his

counsel, learned trial Court has dismissed the case for non-prosecution. Any

order dismissing the complaint for non-prosecution would amount to acquittal of the accused in terms of Section 256 of Cr.P.C. It is further contended that the appellant has not absented himself intentionally and that he even moved an application for tracing out his file due to which he finally came to know about the fate of his case.

3. Having heard the learned counsel for the appellant and after perusing the record, it transpires that sufficient cause has been shown by the appellant for his non-appearance before the learned trial Court and merely the absence of the appellant on one date would not justify the dismissal of the complaint for want of prosecution. As the appellant had been regularly appearing on the previous dates of hearing and even adduced and concluded his evidence on record, the learned trial Court ought not to have dismissed the complaint for want of prosecution. The Hon'ble Apex Court in **Mohd. Azeem Vs. A. Venkatesh and Another (2002) 7 SCC 726**, **Aseem Shabanli Merchant Vs. Brij Mehra and Another, (2005) 11 SCC 412**, **Narender Parashar Vs. Jagbir Singh, 2009 (3) RCR (Criminal) 246**, **Neh Pal Sharma Vs. Bijender Singh 2009(2) RCR Criminal 751** and **Purushotam Mantri Vs. Vinod Tandon @ Hari Nath Tandon 2009(1) RCR (Criminal) 442**, **Om Parkash Vs. M/s Golden Foresh India Ltd. 2008(4) RCR (Criminal) 445** also affirmed the aforesaid fact. I have gone through all these judgments which fully apply to the facts of the present case.

4. In the light of the above-mentioned discussion, I find merit in this appeal and the same is allowed and the impugned order dated 11.07.2011 passed by the learned Judicial Magistrate 1st Class, Chandigarh, dismissing the complaint in default, is set aside. The complaint is ordered to be restored to its original number at the stage from where it was dismissed by the trial Court. The

trial Court is directed to proceed further as per law after giving notice to the parties concerned.

(HARPREET SINGH BRAR)
JUDGE

18.01.2024

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