

2024.PHHC.111343



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

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CRM-A-177-MA of 2016 (O&M)

Date of Decision: 28.08.2024

Abhishek Jain

...Applicant

Versus

M/s Shri Kuber Global Resources Pvt Ltd. and others ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Sahil Khunger, Advocate, for the applicant.

N.S.SHEKHAWAT, J. (Oral)

1. The applicant has filed the present application under Section 378(4) seeking leave to appeal against the impugned order dated 05.10.2015 passed by the Court of Judicial Magistrate 1st Class, Ludhiana, whereby, the complaint filed by the present applicant was ordered to be dismissed in default and the respondents were acquitted of the charge.

2. Learned counsel for the applicant vehemently argues that the applicant had filed a complaint under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') against the respondent on account of dishonour of cheque bearing No. 519363 dated 15.03.2014 amounting to Rs. 2 lacs payable

to the applicant's proprietorship concern M/s Vardhman Printing Pack. The applicant and his counsel were appearing on each and every date of hearing fixed by the trial Court. On 31.08.2015, the complaint was adjourned to 12.10.2015 and the said date was duly informed to the applicant as well as the respondents and the said date was also mentioned on the cause list maintained by the Court. Learned counsel further contends that on 12.10.2015, when the applicant came to the Court, he could not find his case in the cause list. On inquiry, he came to know that on 31.08.2015, the complaint was adjourned to 02.10.2015 and not to 12.10.2015. Since, 02.10.2015 was a National holiday, the complaint was put up on 03.10.2015 before the trial Court. On 03.10.2015, the complaint was adjourned to 05.10.2015 for the presence of the applicant and on 05.10.2015, when the applicant did not appear before the trial Court, the complaint was ordered to be dismissed in default. Learned counsel further contends that non-appearance on the part of the applicant on 03.10.2015 and 05.10.2015 was unintentional and bonafide.

3. On the other hand, the respondents were duly served, still, there is no representation on behalf of the respondents.

4. I have heard the learned counsel for the applicant and perused the record carefully.

5. Section 256 of Criminal Procedure Code is extracted below:-

“256. Non-appearance or death of complainant- (1) if the summons has been issued on complaint, and on the day appointed for the appearance of the accused, of any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day.

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may, dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.”

6. The aforesaid provision of law clearly lays down that the Magistrate has discretion to dismiss the complaint if on any date fixed for hearing of the complaint, the complainant fails to appear in the Court. However, if the Magistrate finds that there was some valid reason for nonappearance of the complainant or the presence of the complainant was not required during the Court proceeding, he can very well exercise his discretion to adjourn the complaint. While exercising the jurisdiction under Section 256 Cr.P.C., the Court has to take into consideration that the powers vested in it have to be exercised judiciously and in the interest of justice. In the present case,

the applicant could not appear on one date i.e. on 05.10.2015 and the case was dismissed in default by the trial Court in a hurry.

7. In view of the above discussion, the instant appeal succeeds and the impugned order dated 05.10.2015, passed by the Court of Judicial Magistrate Ist Class, Ludhiana is set aside and the complaint is ordered to be restored to its original number. The learned trial Magistrate is directed to proceed with the complaint from the stage, when it was dismissed in default. The Registry of this Court is directed to inform the learned trial Court in this regard.

8. Since it is an old case, the trial Court is directed to decide the main case on merits expeditiously, preferably within a period of six months from today.

9. Pending applications, if any, are also disposed off, accordingly.

28.08.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No