



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

SR. No.214

**CRM-A-519-MA-2015
Decided on:23.08.2024**

Baljit Singh

...Applicant

Versus

Surinder Kumar

...Respondent

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

Present: Mr. Kushagra Mahajan, Advocate
for the applicant.

Ms. Kamaldeep Kaur, Advocate for
Mr. Ajay Singla, Advocate for the respondent.

N.S. SHEKHAWAT, J.

1. The instant application has been filed under Section 378 (4) Cr. P.C for leave to appeal against the impugned order dated 10.12.2014 passed by the Court of Judicial Magistrate Ist Class, Amritsar vide which the complaint under Section 138 of the Negotiable Instruments ACT, 1881(for short ` NI Act`), filed by the applicant, was ordered to be dismissed for want of prosecution and the respondent has been acquitted.

2. Learned counsel for the applicant submits that the applicant had filed a criminal complaint under Section 138 of the NI Act against the respondent on account of dishonour of a cheque bearing No.050496 dated 12.01.2015 for a sum of Rs.60,000/-. The first date for evidence of the applicant was fixed on 08.08.2014 and ultimately the case was adjourned to

different dates for recording of the evidence. He further contends that on



10.12.2014, a strike was observed by the District Bar Association and no counsel was appearing in District Courts, Amritsar. Due to this, the applicant could not appear before the trial Court for recording of the statement and the case was dismissed for want of prosecution. Learned counsel further contends that the trial Court had proceeded in an exceptional hurry and wrongly acquitted the respondent. Learned counsel for the appellant has relied upon the law laid down in the matter of “**Shakti Industrial Corporation Vs. Ridaus Auto Components Private Limited and other**”, 2015(8) RCR (Criminal) 457; “**Santosh Devi Vs. Mahinder Singh**”, 2015(2) R.C.R. (Criminal) 192 and “**The Associated Cement Co. Ltd. Vs. Keshvanand**”, 1998 (1) RCR (Criminal) 309.

3. On the other hand, learned counsel for the respondent has submitted that the applicant had intentionally not appeared before the court below and thus, the impugned order is legally sustainable.

4. I have heard learned counsel for the parties and minutely perused the case file.

5. It is apt to refer to Section 256 of the Code of Criminal Procedure, which reads as under:-

“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 non-appearance 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 appellant could not appear on one date i.e. on 10.12.2014 and the case was dismissed in default by the trial Court in a hurry.

7. In view of the above discussion, the present case succeeds and the impugned order dated 10.12.2014, passed by the Court of Judicial Magistrate Ist Class, Amritsar is set aside and the complaint is ordered to be restored to its original number. The learned trial Court is directed to proceed with the complaint from the stage, when it was dismissed in default. The parties are directed to appear before the trial Court on 22.10.2024 for further



proceedings. 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 one year from today.

9. The trial Court record, if any, be sent back.

23.08.2024
mks

(N.S.SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO