



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

CRM-A-1415-2023 (O&M)
Date of decision: 03.10.2024

Manish Chaprana

...Appellant

Versus

Rajender Chaprana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Gaurav Singla, Advocate for the appellant.

KARAMJIT SINGH, J. (ORAL)

CRM-42367-2023

1. This is an application under Section 5 of the Limitation Act for condonation of delay of 52 days in filing the appeal.
2. Heard.
3. For the reasons as mentioned in the application, the same is allowed. Delay of 52 days in filing the appeal is condoned.

CRM-A-1415-2023

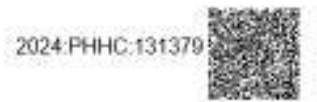
1. The appellant/complainant has challenged the order dated 07.06.2023 passed by the Court of learned Judicial Magistrate Ist Class, Faridabad vide which the complaint having number COMI/216/2020 titled Manish Chaprana Vs. Rajender Chaprana etc., was dismissed for want of prosecution.
2. The counsel for the appellant/complainant argued that Manish Chaprana filed aforesaid complaint under Section 156(3) Cr.P.C against respondents wherein the trial Court sought report from SHO of Police



Station concerned. The report submitted by the police was taken on record by the trial Court and thereafter, the complaint was fixed for consideration. That due to some unavoidable circumstances, appellant was unable to appear before the trial Court and he requested his counsel to move an application seeking exemption from personal appearance of the appellant. However, the counsel for the appellant failed to move any such application and consequently, impugned order dated 07.06.2023 was passed by the learned trial Court. It is further submitted that non appearance of appellant or his counsel in the trial Court on the date fixed was not intentional or willful. It is further submitted that prior to passing of the impugned order, the complainant was regularly appearing before the trial Court.

3. Admittedly, the complainant had not gained anything by remaining absent on the date fixed in the trial Court. There is nothing to show that there was any malafide on the part of the complainant for his absence from proceedings before the trial Court on the date fixed. Nothing is available on the record to show that previously also the complaint defaulted in similar manner. So, there was a single default on part of the complainant on account of which the complaint filed by the complainant was dismissed for want of prosecution. No one was prejudiced due to non appearance of complainant or his counsel on 07.06.2023. Further, the absence of complainant on one date in the complaint case is no ground to dismiss the complaint. The Hon'ble Apex Court in Mohd. Azeem Vs. Venkatesh and another (2002) 7 SCC 726 had held that if there was one single default in appearance on the part of complainant, dismissal of complaint is not proper.

4. Therefore, from the above, I find merit in this petition and the



same is allowed. The impugned order passed by Sub Divisional Judicial Magistrate, Faridabad dated 07.06.2023 dismissing the complaint is set aside subject to cost of Rs.5000/- to be deposited by the appellant with the District Legal Services Authority, Faridabad. The complaint is ordered to be restored at the stage from where it was dismissed by the trial Court. The trial Court is directed to proceed further as per law.

5. The appellant is directed to appear before the trial Court within next 30 days from today.

03.10.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No