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

CRM-M-41876-2024

Date of Decision: August 29, 2024

Chand Rani

.....Petitioners

Versus

Sushma Rani

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Suresh Kaushik, Advocate
for the petitioners.

.....

RAJESH BHARDWAJ, J.(ORAL)

Petitioner has approached this Court under Section 528 of Bharatiya Nagrik Suraksha Sanhita, 2023 for quashing the order, dated 02.07.2024, Annexure P-3, passed by learned Judicial Magistrate, Nabha, whereby the application for restoration of complaint under Section 138 of the Negotiable Instruments Act (for brevity, 'the NI Act') has been dismissed on the ground that there is no provision in Code of Criminal Procedure or in the NI Act which empowers the Magistrate to restore a complaint, which has been dismissed in default. It is further prayed that the complaint filed under Section 138 of the NI Act may kindly be restored to its original number and position.

It has been submitted by learned counsel for the petitioner that the petitioner filed the complaint under Section 138 of the NI Act against the respondent. However, as he was suffering from Dengue, he could not appear before the trial Court on 24.11.2023 and on account of the same, the complaint filed by him was dismissed for non-prosecution on the same date. He submits that the petitioner filed an application for restoration of the same, however, learned trial Court has declined the same by relying upon the judgment of Hon'ble Apex Court in the case of **Major General A.S.**



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Gauraya and another vs S.N.Thakur and another 1988(1) RCR 3, Jitender Bajaj vs State 2005 CrL.J.316 and Om Parkash vs Golden Forest 2008(3) CCC 105 (P&H), of this Court in which it has been held that the Court of Magistrate has no power to restore the same. It is submitted that the case has not been decided on merits and thus, by virtue of the impugned order, the application for restoration of the complaint has been dismissed and as such the petitioner has suffered an irreparable loss and injury as the complaint has not been decided on merits. He submits that the complaint be restored and decided on merits.

After hearing learned counsel for the petitioner and going through the facts of the case, this Court finds that the complaint has been dismissed for non-prosecution. This Court also finds that absence of the petitioner as well as his counsel is totally unintentional and hence, the complaint should be decided on merits, after hearing both the sides, in accordance with law.

Resultantly, the present petition is allowed. Order dated 02.07.2024 is set aside. Complaint is ordered to be restored to its original number. Let the petitioner appear before the trial Court within 15 days from today and on his appearance, trial Court is directed to start the proceedings from the stage when it was dismissed in default, and decide the complaint on merits, after hearing both the sides, in accordance with law.

August 29, 2024

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(RAJESH BHARDWAJ)
JUDGE

1. Whether speaking/reasoned ?
2. Whether reportable ?

Yes/No
Yes/No