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

CRM-M-44196-2024 (O&M)
Date of Decision:- 11.12.2024

SATISH KUMAR GUPTAPetitioner

Vs.
PARVEEN SHARMA ...Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. S.K. Tripathi, Advocate for the petitioner.

AMARJOT BHATTI, J.

CRM-45676-2024

This is an application under Section 528 of BNSS, 2023 for placing on record zimni orders as Annexure P-5.

For the reasons mentioned in the application, same is allowed and the accompanied documents (Annexure P-6) are taken on record.

Main case.

Petitioner Satish Kumar Gupta filed petition under Section 528 of BNSS, 2023 for quashing impugned order dated 16.07.2024 (Annexure P-4) vide which learned Judicial Magistrate First Class, Gurugram dismissed complaint No.NACT-7866 dated 18.04.2018 under Sections 138, 141, 142 of Negotiable Instruments Act, 1881 (in short 'NI Act') for non-prosecution, the said order being arbitrary, illegal and



unreasonable, with the prayer that said complaint be restored to its original status or any other order or direction which the Court may deem fit in the given facts and circumstances of the case.

2. Learned counsel for petitioner argued that petitioner filed complaint against Parveen Sharma under Section 138 of NI Act in the year 2018 (Annexure P-1). He was continuously pursuing the said complaint. Complaint remained pending for a long duration due to pandemic of Covid-19. Statement of petitioner/complainant was also recorded and several adjournments were taken for the purpose of his cross-examination. However, due to non-appearance of complainant, his complaint was dismissed for non-prosecution vide order dated 16.07.2024. It is submitted that petitioner/complainant will suffer great prejudice in case said complaint is not restored to its original number.

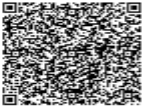
3. Learned counsel for petitioner has annexed all relevant documents necessary for proper adjudication of the complaint. Therefore, no purpose would be served by giving notice to the respondent/accused.

4. I have considered the arguments and have gone through the record. It is matter of record that said complaint was filed under Section 138 of NI Act (Annexure P-1) in the year 2018 in which after recording of pre-summoning evidence on 19.05.2018 summoning order was passed on the same day and the case was adjourned for appearance of accused for 17.08.2018. On 17.08.2018, 01.11.2018, 14.03.2019 presence of accused/respondent could not be procured and ultimately his arrest warrants were issued for 18.07.2019. Case was received by transfer by another Judicial Magistrate 1st Class and surprisingly presence of accused



was marked in person and it was fixed for recording plea of defence. Again on three dates, case was adjourned for the same purpose. Thereafter, file was taken during pandemic of Covid-19 and it was adjourned in routine. On 16.08.2021 there was application seeking exemption from personal appearance of the complainant and at that point it was fixed for defence evidence. Again application was filed for exemption from personal appearance and it was taken up in routine. Finally, another counsel appeared for complainant and it was again adjourned for cross-examination of complainant as per order dated 22.08.2022. No concrete proceedings took place. Case was adjourned time and again for cross-examination of complainant. It is rightly pointed out that on one date i.e. 16.07.2024 on account of absence of complainant, complaint was dismissed for non-prosecution by passing impugned order.

5. Aforesaid zimni orders indicate that proceedings were conducted in haphazard manner. Sometimes it was adjourned for recording plea of defence sometime for defence evidence and again for cross-examination of complainant. Complainant was pursuing his complaint since 2018. In case there was absence of complainant notice to the complainant could have been served. In light of aforesaid factual position, petition filed by petitioner is allowed and impugned order dated 16.07.2024 is quashed and the complaint is restored to its original number with condition to the complainant to deposit cost of Rs.25,000/- with Institute for the Blind, Sector-26, Chandigarh. Trial Court is directed to look into procedure to be followed for holding trial in complaint under Section 138 of NI Act and to proceed as per law.



6. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

(AMARJOT BHATTI)
JUDGE

11.12.2024
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Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No