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

CRM-M-44857-2024

Date of Decision:- 10.09.2024

SUMANDEEP KAUR

....Petitioner

Vs.

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM:-HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Anupinder Singh Brar, Advocate for petitioner.

Mr. Kewal Singh, Addl. A.G. Punjab.

AMARJOT BHATTI, J. (Oral)

1. Petitioner – Sumandeep Kaur has filed instant petition under Section 528 of BNSS, 2023 for quashing of order dated 19.10.2021 (P-4) passed by learned Judicial Magistrate 1st Class, Dhuri vide which complaint filed under Section 138 of NI Act was dismissed in default and order dated 05.06.2024 (P-6) whereby application for restoration of said complaint was dismissed.

2. Learned counsel for petitioner conceded that on 06.09.2021 complainant did not appear before the trial Court and again on 19.10.2021 he could not appear, as a result his complaint was dismissed in default. It is pointed out that there was mis-communication of date and secondly counsel for complainant could not appear due to medical reason. There was



no intentional absence on the part of petitioner or his counsel. He had filed application for restoration of complaint which was also dismissed by passing impugned order dated 05.06.2024 (Annexure P-6). It is prayed that taking a lenient view complaint filed by present petitioner may be restored.

3. Considering the nature of controversy, no purpose would be served by issuing notice to respondents.

4. I have considered the arguments and have gone through the record. The complaint was at initial stage when it was dismissed in default. Even otherwise all relevant interlocutory orders are already produced which are relevant for the adjudication of present petition. Admittedly, present petitioner did not appear before the trial Court on 06.09.2021 and notice was issued to the complainant for 19.10.2021. Said interlocutory order is Annexure P-3. Again on 19.10.2021 neither complainant nor his counsel appeared, as a result the complaint was dismissed in default. Copy of order dated 19.10.2021 is Annexure P-4. Application for restoration of complaint was also declined vide order dated 05.06.2024 (Annexure P-6) holding that learned JMIC was not having power under Cr.P.C. to review or recall his own order dated 19.10.2021. Ultimately present petition has been filed.

Aforesaid interlocutory orders clearly show that there was lapse on the part of petitioner as well as his counsel. There is nothing on record to show that any application seeking exemption was filed. Considering the aforesaid factual position that complaint is under the provision of Section 138 of NI Act, lenient view is taken and accordingly impugned order dated 19.10.2021 (P-4) is set aside and the complaint is restored to its original number subject to deposit of Rs.10,000/- with District Legal Services



Authority, Dhuri.

- 5. The petition is accordingly disposed of.
- 6. Pending miscellaneous application(s), if any, stand disposed of accordingly.

10.09.2024
snd

(AMARJOT BHATTI)
JUDGE

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