



CRM-M-46772-2024

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-46772-2024

Date of decision : 19.09.2024

Shri Ram Transport Company Finance Ltd.

..... Petitioner

Versus

Kamal Netra Pal

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Nilesh Bhardwaj, Advocate,
for the petitioner.

KIRTI SINGH, J. (Oral)

The present petition has been filed under Section 482 Cr.P.C. for quashing the impugned order dated 16.05.2024 (Annexure P-1) passed by Judicial Magistrate 1st Class, Ambala whereby the complaint bearing No. 1779 of 2019 titled as *STFC vs. Kamal Netra Pal* under Section 138 of the Negotiable Instruments Act, 1881 has been wrongly dismissed in default and further for restoration of complaint to its original number.

2. The facts of the present case are that the complainant had filed a criminal complaint bearing No. 1779 of 2019 under Section 138 of Negotiable Instruments Act against the respondent stating that the respondent/accused had availed loan/financial assistance and promise to pay back to the complainant/petitioner. The respondent/accused issued a cheque bearing no.00048 dated: 09.05.2019 for amount of Rs. 5,00,000/- drawn on HDFC, Bank. However the above mentioned cheque was dishonoured with remarks "Funds Insufficient".



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3. Learned counsel for the petitioner submits that the respondent/accused was summoned in the aforesaid complaint, however he kept avoiding the summons on one pretext or other. The complainant was seriously pursuing his complaint and it was accused/respondent who was not coming forward. However, the complainant wrongly noted down and could not appear on 16.05.2024 and the Court of Judicial Magistrate 1st Class dismissed the complaint of the complainant for want of prosecution. Learned counsel further submits that Judicial Magistrate 1st Class has erred by dismissing the complaint for want of prosecution without taking into account the fact that the complainant was not at fault and the non-appearance of the complainant was neither intentional nor deliberate and it was only on account of bonafide mistake.

4. Learned counsel for the petitioner has placed reliance upon judgment passed by this Court in ***Rishi Sharma versus Akhilesh Sharma, 2015 (30) RCR (Criminal) 363*** wherein the following has been held :

*“The present petition has been preferred by the petitioner by invoking provisions of Section 482 Cr.P.C. when as a matter of fact, the appropriate remedy to be availed in the circumstances of the present case is to file an appeal under Section 378(4)Cr.P.C. as dismissal of the complaint under Section 256 Cr.P.C. amounts to acquittal of the accused. However, the question of maintainability of proceedings under Section 482 Cr.P.C. is no longer res integra in the light of judgment of this Court **Chander Dev v. Raj Kumar Bhatia CRM-M-33896 of 2011 decided on 11.12.2013** wherein reference has been made to judgment of Hon'ble the Supreme Court of India **Punjab***



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State Warehousing Corporation Faridkot v. M/s Shri Durga Ji Traders and others, 2012 (1) RCF (Criminal).”

5. Be that as it may and without commenting on the merits of the case, but considering the fact that the complaint was dismissed for want of prosecution by learned Judicial Magistrate 1st Class vide order dated 16.05.2024 on failure of the petitioner/complainant to appear only on one date of hearing, justice demands its restoration and decision on merit.

6. Accordingly, the present petition is allowed and the order dated 16.05.2024 passed by learned Judicial Magistrate 1st Class is set aside subject to payment of cost of Rs.10,000/- by the petitioner to be deposited with the Poor Patient Welfare Fund, PGIMER Chandigarh within a period of 10 days from today. The complaint is ordered to be restored to its original number and the trial Court shall proceed in the case in accordance with law.

(KIRTI SINGH)
JUDGE

19.09.2024
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No