



CRM-A-1424-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARHCRM-A-1424-2024 (O&M)
Date of decision : 29.10.2024

VIRENDER KUMAR SHARMA

..... Petitioner

Versus

RAJESH BATRA

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Gaurav Tyagi, Advocate,
for the petitioner.

KIRTI SINGH, J. (Oral)CRM-43309-2024

This application is for condonation of delay of 06 days in preferring the appeal.

2. For the reasons mentioned in the application, the same is allowed. Delay of 06 days in filing the appeal is condoned.

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3. The application has been filed under Section 419(4) of BNSS for leave to appeal against the impugned order dated 23.08.2024 passed by the Court of Judicial Magistrate Ist Class, Panipat vide which the complaint under Section 138 of the Negotiable Instruments Act, 1881 filed by the appellant was ordered to be dismissed for want of prosecution.

4. Learned counsel for the applicant submits that the applicant was the complainant in the said case and as such, is entitled to prefer an appeal against an



order so passed by the Trial Court. Upon considering the submissions, the instant application is allowed and leave to prefer appeal is granted to the applicant.

5. Registry is directed to assign the number to the instant appeal forthwith.

MAIN CASE

6. The present appeal has been filed by the applicant/appellant against the impugned order dated 23.08.2024 passed by the Court of Judicial Magistrate Ist Class, Panipat, whereby the complaint filed by the present appellant was ordered to be dismissed for want of prosecution.

7. The appellant had filed a complaint bearing No.NACT/1779/2020 under Section 138/142 of the Negotiable Instruments Act (hereinafter referred to as the “Act”), (Annexure A-1), against the respondent in the Court of Judicial Magistrate Ist Class, Panipat on 18.12.2020. After recording the preliminary evidence, the Trial Court summoned the respondent for commission of the offence punishable under Section 138 of the “Act”. However, inadvertently, learned counsel for the appellant could not appear before the Trial Court as wrong date was noted by the counsel and the Trial Court dismissed the case for non prosecution. Learned counsel further submits that the complaint was dismissed by the Trial Court in an exceptional hurry.

8. Learned counsel for the appellant has relied upon the law laid down in the matter of **“Shakti Industrial Corporation Vs. Ridaus Auto Components Private Limited and other”, 2015(8) RCR (Criminal) 457; “Santosh Devi Vs. Mahinder Singh”, 2015(2) R.C.R. (Criminal) 192 and “The Associated Cement Co. Ltd. Vs. Keshvanand”, 1998 (1) RCR (Criminal) 309.**

9. Learned counsel further contended that on 23.08.2024 no effective hearing was to take place and the complaint was wrongly ordered to be dismissed in default by the Judicial Magistrate Ist Class, Panipat.



10. I have heard learned counsel for the applicant/appellant and perused the record carefully.

11. From the record it is apparent that the complaint in the present case was filed on 18.12.2020 and thereafter, the appellant/complainant was regularly appearing before the Trial Court, however, on 23.08.2024 the appellant could not appear before the Trial Court nor his counsel had moved an application for exemption from personal appearance as wrong date was noted by the counsel. Consequently, the complaint was ordered to be dismissed for non-prosecution.

12. Section 256 of Criminal Procedure Code is extracted below:-

“256. ***Non-appearance or death of complainant-*** (1) if the summons has been issued on complaint, and on the day appointed for the appearance of the accused, of any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day.

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may, dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.”

13. The aforesaid provision of law clearly lays down that the Magistrate has discretion to dismiss the complaint if on any date fixed for hearing of the complaint, the complainant fails to appear in the Court. However, if the Magistrate finds that there was some valid reason for non-appearance of the complainant or the presence of the complainant was not required during the Court proceeding, he can very well exercise his discretion to adjourn the complaint. While exercising the



jurisdiction under Section 256 Cr.P.C., the Court has to take into consideration that the powers vested in it have to be exercised judiciously and in the interest of justice. In the present case, the appellant could not appear on one date i.e. on 23.08.2024 and the case was dismissed in default by the Trial Court in a hurry.

14. In view of the above discussion, the instant appeal succeeds and the impugned order dated 23.08.2024, passed by the Court of Judicial Magistrate Ist Class, Panipat is set aside and the complaint is ordered to be restored to its original number. The learned trial Magistrate is directed to proceed with the complaint from the stage, when it was dismissed in default. The Registry of this Court is directed to inform the learned trial Court in this regard.

15. Pending applications, if any, are also disposed off, accordingly.

(KIRTI SINGH)
JUDGE

29.10.2024
Kavita

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