

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-5410-2024 in/and CRM-M-152-2024

Decided on 04.02.2025

Rajesh Kumar @ Rajesh

... Petitioner

VS.

Vipin Kaushal

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Amit Malik, Advocate and
Mr. Manjeet Kundu, Advocate for the applicant

Sandeep Moudgil, J.

CRM-5410-2024

For the reasons mentioned in the application, the same is allowed
and the delay of 21days is hereby condoned.

CRM stands disposed of.

Main case

(1). This application filed under Section 378(4) CrPC for grant of
leave to file appeal against the judgment dated 03.11.2023 passed by JMIC,
Gurugram vide which the complaint bearing NACT/894/2017 dated 18.12.2017
(Annexure A1) has been dismissed in default for want of prosecution for non-
appearance.

(2). Learned counsel for the applicant submits that the complaint
under Section 138 of NI Act was filed by the applicant/complainant against the
respondent alleging that he gave friendly loan of Rs.1,00,500/- and the cheque
issued by the respondent in relation thereto, was dishonoured. He further
averred that on 18.12.2017, the complaint came to be listed before the trial
court and eventually on 03.11.2023, neither the applicant nor his counsel came

present in Court for recording of statement under Section 313 CrPC due to wrong noting of date, as a result of which, the complaint was dismissed in default by the trial court vide impugned order dated 03.11.2023 (Annexure A3).

(3). It is contended that the trial court failed to consider the fact that the applicant through his counsel was regularly appearing before the trial court and it is on account of wrong noting down of date i.e. 04.11.2023 instead of 03.11.2023, that the applicant's counsel came to know on 04.11.2023 that the matter was taken up on 03.11.2023 and has been dismissed for non-appearance of the applicant.

(4). Taking into consideration the totality of the circumstances and also the fact that the matter has been pending since 2017 wherein charges have already been framed against the respondent, it would not be in the fitness of things for this Court to sustain the impugned order dated 03.11.2023 passed by the trial court moreso when the default for non-appearance on the part of the applicant appears to be penultimate.

(5). Accordingly, the application is allowed and the order dated 03.11.2023 passed by JMIC, Jind is hereby set aside and the matter is remanded to the trial court to decide the same afresh on merits and in accordance with law by giving adequate opportunities to the parties to lead their evidence.

(6). Ordered accordingly.

04.02.2025

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No