

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr.A No.440 of 2007**

**Date of decision : June 30, 2009**

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<b>Surinder Sharma</b>	<b>Versus</b>	<b>...Appellant.</b>
<b>Sanjay Dharmaik</b>		<b>...Respondent.</b>

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***Coram***

**The Hon'ble Mr. Justice Surjit Singh, Judge.**

**Whether approved for reporting?**

**For the Appellant : Mr. Rakesh Jaswal, Advocate.**

**For the Respondent : Mr. Janesh Gupta, Advocate.**

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**Surjit Singh, J** (oral)

Present appeal is directed against the order, dated 9<sup>th</sup> August, 2007 of learned Chief Judicial Magistrate, whereby complaint of the appellant, under Section 138 of the Negotiable Instruments Act, which he instituted against respondent Sanjay Dharmaik, had been dismissed in default of his appearance, before the said Magistrate.

**2.** Complaint instituted by the appellant was listed before the Chief Judicial Magistrate on 25<sup>th</sup> May, 2007. That day it was adjourned to 9<sup>th</sup> August, 2007, after order was passed for issuance of bailable warrant against the respondent, on filing of process fee by the appellant. Appellant filed process fee, but in the form of Process Fee next date of hearing was mentioned as 28<sup>th</sup> August, 2007, instead of 9<sup>th</sup> August, 2007.

**3.** Appellant's plea is that he had wrongly noted the date to which the matter had been adjourned, on 25<sup>th</sup> May, 2007, and this is demonstrated by the Process Fee form, which he had submitted. Record of the trial Court shows that in the

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Whether reporters of the local papers may be allowed to see the judgment?

...2...

Process Fee form, next date of hearing is recorded as 28<sup>th</sup> August, 2007, instead of 9<sup>th</sup> August, 2007 and this fact by itself substantiates the plea of the appellant that he did not appear on 9<sup>th</sup> August, 2007, because he wrongly noted the next date as 28<sup>th</sup> August, 2007.

**4.** Learned counsel for the respondent submits that the plea of the appellant is shown to be false, by the fact that the appellant applied for the certified copy of order dated 9<sup>th</sup> August, 2007 (the impugned order), on 23<sup>rd</sup> August, 2007, and that in case he had noted down the date as 28<sup>th</sup> August, 2007, as alleged by him, how could he have come to know that his complaint had been dismissed on 9<sup>th</sup> August, 2007. The submission though appears to be convincing, yet the fact remains that in the Process Fee form the date was mentioned as 28<sup>th</sup> August, 2007, as already noticed, hereinabove, and because of this reason the Office of the Magistrate also did not issue the process to the respondent, in compliance with the order dated 25<sup>th</sup> May, 2007.

**5.** For the foregoing reasons, appeal is allowed, impugned order dated 9<sup>th</sup> August, 2007 is set aside and the complaint is restored to the file of the learned Chief Judicial Magistrate. Record of the learned Chief Judicial Magistrate alongwith a copy of this order be returned, immediately.

Parties are directed to appear before the learned Chief Judicial Magistrate on 16<sup>th</sup> July, 2009.

**June 30, 2009**<sub>(sd)</sub>

**( Surjit Singh ), J**