

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

Cr.M.P.(M) No.422 of 2013

Decided on: August 30, 2013.

Jitender Puri

. ...Appellant.

Versus

Rewatu Raman and another.

.... Respondents

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting¹?

For the appellant : Mr. G.R. Palsara, Advocate.

For the respondents : Mr. Subhash Sharma, Advocate, for respondent No.1.

Mr. H.K.S. Thakur & Mr. V.K. Verma, Addl. Advocates General for respondent No.2.

SURINDER SINGH, J (oral):

Cr.M.P.(M) No.422 of 2013/ Cr.A. No. _____ of 2013.

Record received. The matter can be disposed of at this stage. Heard and gone through the record. Delay condoned. Appeal be registered.

2. The petitioner filed a complaint under Section 138 of the Negotiable Instruments Act against respondent No.1, pursuant to which respondent was served and had put in appearance on 6.6.2011, thereafter the case was adjourned for 4.7.2011 and 8.8.2011 on which dates,

Whether reporters of the Local papers are allowed to see the judgment?

learned Presiding Officer was on medical leave and ultimately, the case was adjourned for 16.9.2011, on which date, parties were present, but the case was adjourned for further orders on 21.12.2011, but the case stood transferred to Court of Judicial Magistrate, Court No.1, Mandi. Parties were not present, as such notices were issued for their presence for 17.3.2012. Even on 17.3.2012, none was present. Again summons were issued for 17.4.2012 on which date the petitioner stood served. Since he did not put in appearance on that date, as such, complaint was dismissed on the ground that the presence of the complainant was necessary to proceed with the complaint.

3. A perusal of the record shows that after 6.6.2011, the parties were present on 16.9.2011 when the complainant was present, but it is not understood, what was the need to adjourn the case for 21.12.2011 for further orders. On 17.4.2012, respondent was not present and what necessity was felt by the learned Judicial Magistrate to say that in the absence of the complainant, complaint cannot be preceded. Further the impugned order does not spell out anything about it. In absence of any reason that the presence of the complainant was necessary to

proceed with the complaint, the impugned order dated 17.4.2012 passed by the learned trial Court dismissing the complaint is indefensible also in view of the judgment passed by this Court in **Cr.A. No.298 of 2011 titled M/s Banarsi Dass and Sons V. M/s Bhardwaj General Store and another** decided on 9.8.2012. Thus, the impugned order is set-aside and the case is remanded back to the learned trial Court to dispose of it in accordance with law. The parties are hereby directed to be present before the learned trial Court on 30.9.2013.

4. Send down the record forthwith, so as to reach it in the learned trial Court before the date aforesaid.

**(Surinder Singh),
Judge.**

August 30, 2013.
(Pds)