

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- CrI(A) No. 20/2024

Narpat Rai, Age 53 yearsAppellant(s)
S/o Sh. Om Dutt
R/o Village Gandharwan
Tehsil Akhnoor, District Jammu.

Through: Mr. Rajnesh Singh Parihar, Advocate.

Vs

1. Vicky Kumar, S/o Sh. Tarsem Lal, Respondent(s)
R/o House No. 19, Ward No. 5,
Bishnah, Jammu.
2. Khushi Business Promotion Group,
House No. 244/56A, Rampura, Last
Morh, Gandhi Nagar, Jammu,
through its Proprietor Vicky Kumar.

Through: None.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(04.12.2024)

1. The appellant as a complainant came forward with institution of a criminal complaint on 15.09.2017 against respondent No. 1 as being the proprietor of the respondent No. 2 for alleged commission of offence under section 138 of the Negotiable Instruments Act, 1881 on account of dishonoring of two cheques No. 070018 dated 24.05.2017 for Rs. 7,00,000/- and 070019 dated 29.06.2017 for Rs. 2,00,000/- drawn upon the J&K Bank.
2. In the said complaint, the accused came to cause appearance on and from 15.01.2020 onwards.
3. The complaint came to be posted for evidence of the appellant/complainant and the evidence affidavits to the said effect even came to be filed.

4. At the said stage of the proceedings, Covid-19 scenario came to intervene resulting in disruption of public life including the workings of the Courts bringing in the restrictions as to free entry of the litigants in the Court premises thereby leaving the matter of prosecution of the case/s to the respective counsel/s.

5. The complaint came to suffer dismissal for non-prosecution in terms of an order dated 09.03.2022 passed by the Court of Judicial Magistrate 1st Class (Munsiff), Akhnoor while the last order of 29.01.2022 had recorded the fact of restrictions being in operation on account of Covid-19 pandemic.

6. The Judicial Magistrate 1st Class (Munsiff), Akhnoor should have acted with bit of diligence and indulgence in dealing with absence of the complainant for 09.03.2022 and for the purpose of securing the appearance of the complainant as well as his counsel in the face of the prevailing Covid protocol, at least a notice for appearance of the appellant/complainant in person ought to have been issued protocol so as to notify the appellant/complainant that while the Covid-19 restrictions are in force, his case is getting unattended by his counsel and, therefore, warranting his appearance in the case on the next date failing which the case was to suffer an adverse order/outcome.

7. Procedural fairness in the context of the case required this much to be done by the Judicial Magistrate 1st Class (Munsiff), Akhnoor but which was dispensed with acting mechanically thereby resulting in miscarriage of justice and also failure of the cause of the

appellant as complainant to earn adjudication of his complaint on merits rather than by default mode.

8. A known principle of law is that an act of court shall prejudice none whereas in the present case the act of the Judicial Magistrate 1st Class (Munsiff), Akhnoor prejudiced the appellant as complainant in the criminal case before it and that extended a premium to the respondent No. 1 providing him an escape from the criminal prosecution validly instituted and initiated by the appellant/complainant.

9. In this case, the respondent No. 1 came to be served as is borne out from the report submitted by the Police Station Bishnah of having served the notice for appearance in the present case upon the respondent No. 1-Vicky Kumar who despite service has chosen to stay away from the proceedings, as such, the present appeal preferred by the appellant/complainant against the order dated 09.03.2022 passed by the Judicial Magistrate 1st Class (Munsiff), Akhnoor is allowed. The complaint filed by the appellant as complainant on the file of the Judicial Magistrate 1st Class (Munsiff), Akhnoor shall stand revived and the proceedings to be taken up from the stage at which the same were in terms of the last effective proceedings conducted in the case.

10. However, before proceeding further, the Judicial Magistrate 1st Class (Munsiff), Akhnoor to ensure due service of the respondent/accused in the complaint.

- 11. Disposed of,** accordingly.
- 12.** Appellant to appear before the Judicial Magistrate 1st Class (Munsiff), Akhnoor on 16.12.2024.
- 13.** A copy of this order to be forwarded to the Judicial Magistrate 1st Class (Munsiff), Akhnoor for notice and record.

**(RAHUL BHARTI)
JUDGE**

**JAMMU
04.12.2024**
Shivalee

Whether the order is speaking: Yes/ No
Whether the order is reportable: Yes/No

