

(2013) 04 UK CK 0042
In the Uttarakhand High Court
Case No : Criminal Appeal No. 21 of 2010

Sher Singh Pundir

APPELLANT

Vs

Kunwar Singh Tomar

RESPONDENT

Date of Decision : 12-04-2013

Acts Referred:

Citation : (2013) 1 NCC 893

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Judgement

Alok Singh, J.—Present appeal has been preferred by the appellant assailing the judgment and order dated 18.12.2009 passed by Special Judicial Magistrate, Dehradun whereby criminal complaint filed by the appellant u/s 138 of the Negotiable Instruments Act, 1881 was dismissed for want of prosecution. Mr. Ramji Srivastava, learned counsel for the appellant, submits that earlier complaint was pending in the court of ACJM, Dehradun however, later on, it was transferred to the court of Judicial Magistrate, Dehradun under the orders of Sessions Judge, Dehradun and the file was received in the court of Judicial Magistrate, Dehradun on 07.09.2009.

2. He further submits that appellant/complainant, on the date fixed in the trial court i.e. 18.12.2009, had some domestic problem, therefore, he informed the clerk of his counsel Mr. S.M. Joshi telephonically, to move an application for adjournment and seeking his personal exemption, however, clerk of his counsel, due to pressure of work, could not inform the counsel consequently, none could appear before the court on the date fixed and the trial court dismissed the complaint for non prosecution.

3. Mr. Ramji Srivastava, learned counsel for the appellant, by placing reliance upon judgment of this Court in the case of Arvinder Singh Vs. State of Uttarakhand and Another, , has argued that complainant, whose "complaint was dismissed, in default, should not be left remediless.

4. Learned counsel for the appellant has also placed reliance upon the judgment passed by Hon"ble Apex Court in the case of S. Rama Krishna Vs. S. Rami Reddy (D) by his LRs. and Others, . Having heard learned counsel for the parties and going through the judgments relied upon by the learned counsel for the appellant and also keeping in mind the fact that complainant should not be left remediless, I find merits in the appeal. Accordingly, the appeal is allowed. Impugned order dated 18.12.2009 whereby complaint was dismissed in non prosecution is set aside. Complaint shall be heard by the trial court de novo. Parties shall appear before the trial court on 08.05.2013 and thereafter, trial court shall proceed with the matter, in accordance with law and shall make every endeavour to expedite the trial, keeping in mind the spirit, as envisaged u/s 143(3) of the Negotiable Instruments Act, 1881 and shall not grant any unnecessary adjournment to either of the parties.