



CRM-M-15135-2023

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**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

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CRM-M-15135-2023 (O &amp; M)

Date of decision: 25.08.2025

Bhagat Singh

...Petitioner

Versus

M/s Elite Investment Advisory Services and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present : Mr. Subhash Kumar, Advocate,  
for the petitioner.

None for the respondents.

**AMAN CHAUDHARY. J. (ORAL)**

1. Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing of order dated 07.10.2022 passed in case CIS No.COMI/368/2017, titled as 'Bhagat Singh vs. Elite Investment Advisory Services etc.' pending before JMIC, Jalandhar, vide which the same has been dismissed in default.
2. Learned counsel contends that non-appearance on the part of the petitioner, before the trial Court in his complaint under Section 138 NI Act was *bona fide*, as his counsel could not appear due to heavy rush of work, for which he cannot be made to suffer. The case before the lower Court being still at the stage of summoning of the respondents-accused, the said dismissal leads to an irreparable loss to him.



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3. The summons having not been issued in the complaint, which was at the nascent stage, thus the service of respondents is dispensed with in the instant matter.

4. This Court vide judgment dated 29.08.2024 passed in **Chand Rani vs. Sushma Rani**, CRM-M-41876-2024 restored a complaint under NI Act, which was at the same stage as the present case and dismissed on the same ground, to its original number.

5. Insofar as the petitioner suffering on account of the absence of the counsel is concerned, it would be apposite to refer to the case of **Rafiq vs. Munshilal and another**, AIR 1981 SC 1400, wherein Hon'ble the Supreme Court had held that, "What is the fault of the party who having done everything in his power expected of him, would because of his advocate... The problem that agitates us is whether it is proper that a party should suffer for the inaction, deliberate omission, or misdemeanour of his agent... We cannot be a party to an innocent party suffering injustice merely because of his chosen advocate defaulted." Reiterating the aforesaid view, in **Shaikh Mukthar and another vs. State of Andhra Pradesh**, (2020) 19 SCC 178, it was observed that the appellants should not have been penalised for the absence of their advocate on the date of hearing.

6. Pertinently, the proceedings under Section 138 of NI Act are of a quasi-criminal nature, having been initiated on a private complaint. The dismissal thereof at the pre-summoning stage, without consideration on merits, results in denial of access to justice and forecloses the right of the complainant to prosecute the offence.



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7. Keeping in view the peculiar facts and circumstances of the case and in the interest of justice, the present petition is allowed and the impugned order dated 07.10.2022 is set aside and the complaint, Annexure P-2, is ordered to be restored to its original number.

25.08.2025  
parveen kumar

**(AMAN CHAUDHARY)**  
**JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No