

In the High Court of Punjab and Haryana at Chandigarh

**Criminal Appeal-AS-15 of 2015
Date of Decision: 30.01.2015.**

Santosh Devi

.....Appellant

Versus

Mahinder Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Rahul Vats, Advocate for
Mr. Tarun Gupta, Advocate
for the appellant.

None for the respondent.

SABINA, J.

Appellant had filed complaint under Section 138 of the Negotiable Instruments Act, 1881 against the respondent qua dishonour of cheques in question dated 4.8.2012 and 16.8.2012 in the sum of ₹ 5,000/- and ₹ 20,000/-, respectively. Vide the impugned order dated 11.11.2013, the complaint was ordered to be dismissed. Hence, the present appeal by the appellant-complainant.

Learned counsel for the appellant has submitted that on 11.11.2013, the case was listed before the Trial Court for appearance of the accused. Hence, presence of the complainant was not necessary.

None has appeared on behalf of the respondent.

Impugned order dated 11.11.2013 reads as under:-

“Case file taken up again during evening court. Case

called several time but none has appeared on behalf of complainant. Even on the last date of hearing exemption application was filed on behalf of the complainant, thus it appear he has lost interest in the present case or the matter has been compromised between the parties. It is already 4.45 P.M. No further wait is justified. Hence, the present complaint is hereby dismissed in default. File be consigned to the record room after due compliance.”

Section 256 of the Code of Criminal Procedure, 1973 reads as under:-

Non-appearance or death of complainant

(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

Thus, as per the above provision, in case the complainant is absent on the date fixed for appearance of the accused, the Magistrate has the power to adjourn the hearing of the case to some other date.

Since in the present case, on 11.11.2013, the case was fixed for appearance of the accused, the presence of the complainant-appellant was not necessary. In these circumstances, it would be in the interest of justice to set aside the impugned order whereby the complaint was ordered to be dismissed in default. In case the complaint is restored to its original number, the lis between the parties will be disposed of on merits.

Accordingly, in the interest of justice, the impugned order dated 11.11.2013 is set aside. Consequently, the complaint in question is ordered to be restored to its original number. Trial Court is directed to proceed further with the complaint, in accordance with law.

**(SABINA)
JUDGE**

January 30, 2015
Gurpreet