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

CRA-AS-26 of 2015

Date of decision: February 06, 2015

Roshan Lal Goel

.....Appellant

Versus

Shri Rajinder Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Rajiv Sharma, Advocate
for the appellant.

None for the respondent.

SABINA, J

Appellant had filed complaint against the respondent under Section 138 of the Negotiable instruments Act, 1881 qua dishonor of cheque in the sum of ₹12,00,000/-. Appellant led his preliminary evidence before the trial Court and respondent was summoned to face the trial. Notice of accusation was served on the respondent on 20.07.2011.

On 20.04.2012, following orders were passed by the trial Court:-

“Case called several time since morning but none has appeared on behalf of the complainant. First call made at 10.00 AM. Case called out again at 12.30 PM. File be put up after lunch.

Sd/-

*(Sachin Yadav)
JMIG/G 20.4.2012*

xxxxxxx

Case file taken up after lunch. Case called

several time since morning but none has appeared on behalf of the complainant. It is already 3.35 PM. Further wait is not justified. It seems that present complainant is not interested in pursuing the present complaint. The present complaint is hereby dismissed for want of prosecution. File be consigned to the record room after due compliance.

*Sd/-
(Sachin Yadav)
JMIG/G 20.4.2012”*

Learned counsel for the appellant has submitted that in fact, appellant had noted down the adjourned date as 25.04.2012. Appellant had also sought summoning of the witnesses for 25.04.2012 by moving an application Annexure A-3 on 12.04.2012 and had deposited the requisite diet money qua the witnesses sought to be examined.

None has appeared on behalf of the respondent despite service.

A perusal of Annexure A-3 reveals that the appellant had deposited the diet money qua four witnesses sought to be examined. In the said application, the date fixed before the trial Court has been mentioned as 25.04.2012. The said application was allowed by the Judicial Magistrate on 12.04.2012. In consequence thereto, appellant deposited the diet money on 20.04.2012. Thus, it is evident that the appellant was duly pursuing his case. When the application moved by the appellant for depositing the diet money was allowed by the trial Court, it was not brought to the notice of

the appellant that in fact, the case was fixed for 20.04.2012. A perusal of the impugned order further reveals that respondent was also not present on the said date. It can be presumed that the respondent also had noted down a wrong date and due to this reason, even he was not present before the trial Court on 20.04.2012.

In the facts and circumstances of the present case, the absence of the complainant on 20.04.2012 before the trial Court cannot be said to be intentional. Rather, appellant had been duly pursuing his case and had deposited the necessary diet money to summon the witnesses and the same was duly allowed by the trial Court on 12.04.2012 and in pursuance there to, diet money was deposited by the appellant.

Thus, in the facts and circumstances of the present case, it would be just and expedient to set aside the impugned order and restore the complaint to its original number.

Accordingly, this appeal is allowed. Impugned order dated 20.04.2012 is set aside. Consequently, complaint in question is restored to its original number. Trial Court is directed to proceed further with the complainant in accordance with law.

**(SABINA)
JUDGE**

February 06, 2015

m.singh