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

CRA-AS-27 of 2015

Date of decision: February 06, 2015

Rajbir Singh

.....Appellant

Versus

Sanjeev Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sandeep Goyal, 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 ('Act' for short) qua dishonor of cheque in the sum of ₹4,80,000/- dated 27.11.2008. Trial Court vide order dated 24.01.2009, ordered the summoning of the respondent to face the trial qua commission of offence punishable under Section 138 of the Act.

On 13.03.2014, following order was passed by the trial Court:-

“Case called several times since morning but none has appeared on behalf of complainant. It is already 3.30 PM. Hence suit of the complainant is dismissed in default for want of prosecution. File be consigned to the record room.”

Learned counsel for the appellant has submitted

that the case was listed for appearance of the respondent on

13.03.2014. Presence of the appellant was not necessary. Hence, the trial Court erred in dismissing the compliant in-default.

None has appeared on behalf of the respondent despite service.

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

“256. 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, trial Court has ample power to adjourn the case, if the presence of the complainant is not necessary on the date fixed.

In the present case, complaint was listed for appearance of the respondent on the date fixed and presence of the complainant was not necessary. The case of the

appellant is that appellant could not appear on the date fixed as his counsel had noted down a wrong date. There is no reason to doubt the said contention of the appellant as the appellant had nothing to gain by not appearing before the trial Court on the date fixed. Rather appellant had led his preliminary evidence and thereafter, respondent was ordered to be summoned to face the trial vide order dated 24.01.2009.

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 13.03.2014 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