

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.AS-80 of 2015 (O&M)

Date of decision: August 27, 2015

M/s Happy Steels Pvt. Ltd.

...Appellant

Versus

M/s Indo Asian Auto and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vaibhav Sehgal, Advocate
for the appellant.

Mr.Rakesh Bhatia, Advocate
for the respondents.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the order dated 24.10.2013 passed by learned Judicial Magistrate Ist Class, Ludhiana, whereby the complaint filed by the appellant was dismissed in default for want of prosecution and accused-respondent was acquitted.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that on 24.10.2013 when the case was fixed for awaiting presence of the complainant, none appeared on behalf of the complainant and the Court by stating that perusal of the file shows that on earlier dates also i.e 05.10.2013, 14.10.2013, 17.10.2013 and on that day 24.10.2013, the complainant has

absented from the Court without intimation, dismissed the complaint in default for want of prosecution.

Learned counsel for the appellant cited judgment passed by the Hon'ble Supreme Court in ***S.Anand vs. Vasumathi Chandrasekar, 2008(2) CCC 025 (SC)***, in which it is held that if the complaint is at the stage of defence evidence, it cannot be dismissed for non appearance of complainant. If complainant does not cross-examine defence witness, then complainant would do so at his peril but it cannot be said that presence of complainant was absolutely necessary.

In view of the law cited above, as the complaint case was at the stage of recording the statement of the accused under Section 313 Cr.P.C., therefore, the Court could not have dismissed the complaint and the same should have been decided on merit.

Therefore, the order dated 24.10.2013 passed by learned JMIC, Ludhiana, is set aside. Finding merit in the appeal, the same is allowed.

The matter is remanded back to the trial Court. The parties are directed to appear before the trial Court on 28.09.2015. Learned trial Court/successor Court shall proceed with the complaint as per law. This order is subject to payment of ₹10,000/- as costs to be paid to the opposite party before the trial Court.

August 27, 2015
Vgulati

(INDERJIT SINGH)
JUDGE