

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

CRA-AS-88 of 2015 (O&M)

Date of Decision: September 14, 2015

Varinderjit Bhandari

...Appellant

Versus

Vishwa Mitter Bhandari

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.C.K.Jha, Advocate,
for the appellant.

Mr.Yogesh Chaudhary, Advocate,
for the respondent.

Naresh Kumar Sanghi, J.(Oral)

Vide order of even date passed in CRM-A-993-MA of 2014, leave to appeal has been granted and with the consent of the parties, the main appeal is taken on today's board for final disposal.

Challenge in the present appeal is to the order dated 29.11.2013 passed by learned Judicial Magistrate Ist Class, Ludhiana, whereby the complaint filed under Section 138, Negotiable Instruments Act, 1881, (for brevity "N.I.Act") by the appellant was dismissed by passing the following order:-

"Present: None for the complainant.

Accused on bail with counsel Sh.T.N.Taneja, Adv.

Today case was fixed for cross-examination of the complainant. Case call several times since morning but neither the complainant nor his counsel has come present for cross-examination. It is already 3.45 PM. It seems that complainant is not interested to proceed further in this complaint. As such, the complaint dismissed for want of prosecution. File be consigned to record room.

*Sd/-
(Rahul Kumar)
JMIC/ 29.11.13"*

Learned counsel for the appellant submits that on account of noting down of the wrong date fixed by learned trial Court, the appellant could not appear before the Court below and therefore, the complaint was dismissed for want of prosecution. He further submits that it is a summons case and the dismissal of the complaint would tantamount to an acquittal and therefore, the appellant/complainant has filed the appeal before this Court as per provisions contained under Section 378(4), Cr.P.C.

Learned counsel for the respondent/accused though opposed the prayer of learned counsel for the appellant to the effect that he had wrongly noted down the date given by learned Court below, yet he submits that in fact the dispute is

between the father and son and the negotiation for compromise were going on and in pursuance thereof, the appellant with an intention to give shape to the compromise wanted to get the complaint dismissed for want of prosecution.

Learned counsel for the State submits that the litigation has arisen on the basis of private complaint, therefore, the appropriate orders be passed.

After hearing learned counsel for the parties and going through the material available on record, the present appeal is accepted. The order dated 29.11.2013 passed by learned trial Court is set aside. The complaint titled as “**Varinder Bhandari vs. Vishwamitter**” under Section 138 of the N.I.Act is directed to be restored to its original number before learned trial Court.

The parties to the *lis* shall appear before learned trial Court on 15.10.2015 and thereafter, learned trial Court shall proceed from the stage where it was dismissed in default.

September 14,2015
seema

(Naresh Kumar Sanghi)
Judge