

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.AS-93 of 2015 (O&M)
Date of decision: September 23, 2015

Kunwar Jeet Singh Bhati

...Appellant

Versus

Sushma Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.B.Sharma, Advocate for
Mr.Yash Devi Kaushik, Advocate
for the appellant.

Ms.Deepa Jain, Advocate
for the respondent.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the impugned order dated 30.10.2013 passed by learned Presiding Officer-cum-Judicial Magistrate Ist Class, Evening Court No.1, Faridabad, whereby the complaint filed by the appellant-complainant was dismissed for want of prosecution.

Notice of motion was issued and learned counsel for the respondent appeared and contested the appeal.

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

From the record, I find that even from the perusal of the impugned order dated 30.10.2013, it is clear that the complainant was

appearing in the case regularly but did not appear in the Court on 16.10.2013. Again on 30.10.2013, the complainant did not appear and the complaint was dismissed for want of prosecution and accused was acquitted. The perusal of the order further shows that notice issued to the accused was not received back either served or otherwise, which shows that case was fixed for presence of the accused. It is clear that when the case was fixed for service of the accused, then how the presence of the accused has been marked by stating accused on bail with Advocate. Even otherwise, when the case is fixed for service of the accused, then the presence of the complainant is not necessary nor anything is to be done by the complainant in the complaint. Therefore, learned trial Court should have adjourned the case instead of dismissing it for want of prosecution.

It is in the order itself that the complainant was regularly appearing in the Court, though, on 16.10.2013 and 30.10.2013, he absented from the Court but his presence at that time was not necessary. It is settled law that rights of the parties should be determined on merits as far as possible and the Court should not go into the technicalities of law and should do the substantial justice between the parties.

Keeping in view the facts and circumstances of the present case, the present appeal is accepted. The impugned order dated 30.10.2013 passed by learned Presiding Officer-cum-Judicial Magistrate Ist Class, Evening Court No.1, Faridabad, dismissing the

complaint for want of prosecution, is set aside.

The matter is remitted back to the trial Court to proceed with the complaint as per law. The parties are directed to appear before the trial Court on 20.10.2015.

September 23, 2015
Vgulati

(INDERJIT SINGH)
JUDGE