

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.AS-97 of 2015 (O&M)
Date of decision: September 23, 2015

Tushar Spun Pipes Bupania

...Appellant

Versus

Neeraj Aggarwal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sandeep K. Sharma, Advocate
for the appellant.

Mr.Raju Bajaj, Advocate
for the respondent.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the impugned order dated 27.03.2014 passed by learned Judicial Magistrate Ist Class, Evening Court, Rohtak, whereby the complaint filed by the appellant-complainant was dismissed in default for non-appearance of the complainant.

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 as per order dated 27.03.2014, the complaint has been dismissed in default when it was at the stage of complainant's evidence. As per Section 256 Cr.P.C., the order

dismissing the complaint in default amounts to acquittal of the accused. The perusal of the record shows that on 17.02.2014, counsel for the complainant was present but on that day, no CW was present and the case was adjourned to 27.03.2014 for cross-examination of the CW Ms.Veena Rani as well as remaining evidence of the complainant. On the next date, i.e. on 27.03.2014, neither the counsel for the complainant was present nor the complainant was present, therefore, the complaint was dismissed.

It is now settled law that rights of the parties should be determined on merits as far as possible and one absence of the complainant is not sufficient to construe that he is not interested in pursuing the complaint. The fact that earlier so many opportunities were granted to the complainant for leading evidence, is no ground for dismissing the complaint in default for the absence of the complainant or his counsel only on one date.

In view of the above discussion, I find that the Court below should have given opportunity/notice to the counsel for the complainant or to the complainant to appear in the Court.

Keeping in view the facts and circumstances of the present case, the present appeal is accepted. The impugned order dated 27.03.2014 passed by learned JMIC, Evening Court, Rohtak, dismissing the complaint in default 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. The complaint being old one,

learned trial Court/successor Court is directed to get completed the evidence of the complainant preferably within two opportunities and to decide the case expeditiously.

September 23, 2015
Vgulati

(INDERJIT SINGH)
JUDGE