

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

CRA-S-233-SB-2013 (O&M)

Date of decision: 31.10.2015

Satyawan

...Appellant

Versus

Shri P. Parsad

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. S.S. Virk, Advocate,
for the appellant.

None for the respondent.

Jitendra Chauhan, J.

The instant appeal is directed against order dated 20.08.2010, passed by the learned Judicial Magistrate 1st Class, Panipat, whereby, the complaint preferred by the complainant/appellant was dismissed for non-prosecution.

It is contended that after recording the preliminary evidence, the accused-respondent was summoned for 30.07.2010. However, instead of 30.07.2010, the matter was taken up one day earlier, i.e. on 29.07.2010 and adjourned to 20.08.2010. In these circumstances, the appellant could not put in appearance on 20.08.2010. It is contended that as the matter was taken up one day prior to the adjourned date, notice was

required to be issued to the complainant or his counsel. A further perusal of the impugned order would reveal that the accused, though summoned, was also not present in the Court on that day.

There is no assistance on behalf of the respondent.

Having heard learned counsel for the appellant and going through the case file, this Court feels that in order to impart substantial justice, the complainant deserves a fair chance to prosecute against the accused. He has satisfactorily explained his absence on the relevant date. His father died on 21.07.2010, therefore, he could not come to the Court on 30.07.2010. Moreover, the case was taken up one day prior to 29.07.2010 and further adjourned to 20.07.2010. Thus, the appellant was not aware of the date fixed. The accused who was summoned vide order dated 04.05.2010, was also not present on 20.07.2010. So, no prejudice is going to be caused to the accused.

In these circumstances, without commenting on the merits of the present case, the instant appeal is allowed; the impugned order dated 20.07.2010, is set aside; and the complaint is ordered to be restored to its original number. However, the same shall be subject to the payment of Rs.15,000/-, as costs.

31.10.2015

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(JITENDRA CHAUHAN)
JUDGE