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

**CRM-A-595-MA-2014
Date of decision : 20.10.2015.**

Jasvir Singh

..... Appellant

VERSUS

Rakesh Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Ramandeep, Advocate for
Mr. R.S. Bajaj, Advocate
for the applicant.

Mr. Sandeep Arora, Advocate
for the respondent.

1. **Whether Reporters of local papers may be allowed to see the judgment? Yes/No**
2. **To be referred to the Reporters or not ? Yes/No**
3. **Whether judgment should be reported in the Digest ? Yes/No**

P.B. BAJANTHRI, J. (Oral)

The applicant/petitioner states that this is an application under Section 378(4) of Criminal Procedure Code against the judgment and order dated 25.02.2014, in which the Judicial Magistrate, First Class, Jalandhar ordered as follows:-

*In order to prove its case, complainant
Jasvir Singh has examined himself as CW-1 and
tendered into evidence his affidavit Ex-CA wherein he*

has reiterated the averments made in the complaint and he has also produced the documents Ex-C1 to Ex-C7 and after tendering his affidavit his cross-examination was adjourned for several times and today also the witness Jasvir Sing has not come forward to face the cross-examination despite giving only one opportunity and moreover it was specifically mentioned in the previous order dated 18.02.2014 that next opportunity will be the only one opportunity for cross-examination of CW-1 as the case is going on for cross-examination since 2010 and parties were directed to appear sharp at 12.00 p.m for the said purpose. But despite this order, complainant failed to appear for his cross-examination, thus as per the earlier order since it was the only one chance for cross-examination of CW-1 who has not come forward for the same, complainant evidence was closed by order of this Court.

As the complainant has failed to examine any witness to prove its case and thus no evidence has come on record against the accused. Since there is no incriminating evidence against the accused, as such there is no need to record the statement of accused under Section 313, Cr.P.C. As such, it can be said that the complainant has failed to prove the

existence of legal liability and issuance of the cheque in order to discharge that legal liability and the dishonor of the cheque due to Insufficient Funds and has also failed to prove the service of the legal notice alleged to be issued to the accused.

Learned counsel for the appellant submitted that on the date fixed for evidence, the complainant was very much present, which has been taken note on 25.02.2015, stating that "complainant with counsel Sh. I.S. Bhatia" represented in the matter, despite that the trial Court passed the order. However, learned counsel for the respondent submitted that in the zimni order it is stated that the counsel and appellant were not present for the evidence or the complainant which is fixed for date 25.02.2015 at 12.00 noon.

Heard the learned counsel for the parties.

It is evident from the record that the learned counsel for the complainant as well as complainant were very much present on 25.02.2014. May be at 12.00 p.m., they were not present, consequently the Court proceeded to pass final order.

Having regard to the facts and circumstances and in order to give one more opportunity to complainant to adduce evidence the order dated 25.02.2014 is set aside and the Judicial Magistrate, First Class, Jalandhar is directed to take

evidence of the complainant on 03.11.2015 at 3.00 p.m. and to proceed with the matter in accordance with law, accordingly.

Accordingly, this petition is disposed of.

Further, the appellant is directed to pay cost of ₹ 5,000/- to the respondent before the date fixed viz., 03.11.2015.

October 20, 2015
Ramandeep Singh

(P.B. BAJANTHRI)
JUDGE