

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

**Crl. Misc. No.M- 27237 of 2014
Date of decision: 13.10.2015**

Hari Singh

.....Petitioner(s)

Versus

Amarjit Singh and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. K.S. Boparai, Advocate
for the petitioner.

Mr. H.S. Baath, Advocate
for respondents no.5 to 7.

ANITA CHAUDHRY, J.

Through this petition, the petitioner is seeking quashing of order dated 29.08.2013 (Annexure P-2) vide which the complaint filed by the petitioner had been dismissed in default for non-appearance. The case at that stage was fixed for recording evidence at the pre-summoning stage.

The co-ordinate Bench had issued notice to the respondent. Respondents no.5 to 7 have put in appearance and had filed their reply. The presence of the respondents was not necessary as they were yet to be summoned by the trial Court.

Heard.

The counsel for the petitioner has referred to para no.3 of the petition and has urged that the complainant had examined three witnesses on different dates and the case had been adjourned for 07.06.2013 for remaining evidence when last opportunity was granted for 08.08.2013. He urges that on 08.08.2013, the case was transferred to some other Court and the complainant and his counsel was not informed and the case was taken up by the transferee Court and since there was no appearance and it was simply adjourned for awaiting the presence of the complainant and on the next date, the Judicial Magistrate dismissed the complaint. It was urged that there was no intimation about the transfer of the case and the complaint had been dismissed for non-appearance and at that stage summons had not been issued for appearance of the accused and they may be given one opportunity. Reliance was placed upon ***Danvati Mutual Benefits Ltd. Vs. State of Haryana and another 2008(1) RCR (Criminal) 772.***

The submission on the other hand was that there was an alternate remedy and a revision should have been filed and it was the duty of the complainant to find out where the case had been transferred.

The petition had been dismissed for non-prosecution as the complainant had failed to appear before the transferee Court. No notice had been given to the complainant regarding the transfer nor the transferee Court had issued

notice to the complainant but I also find that the case had been adjourned a number of times for evidence of the complainant and last opportunity had been granted to the complainant to lead its entire evidence. Counsel for the petitioner assures that there would be no further default.

Admittedly, the case was fixed for preliminary evidence of the complainant. The transferee Court had not sent any notice. The complainant was also expected to find the Court in which the transfer was made. The petition is allowed and the petitioner is directed to appear before the Court below on 06.11.2015 and there would be no further default. The trial Court would fix one date for recording the entire evidence of the complainant and on that date no request for further adjournment shall be entertained.

The counsel for the petitioner had pointed out that the petitioner was presently abroad. He has also pointed out that the complaint had been filed through the Special Power of Attorney. The complainant/attorney would put in appearance on the date fixed.

The petition is disposed of.

(ANITA CHAUDHRY)
JUDGE

13.10.2015
sunil