

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AS-43-2016

Date of Decision: February 24, 2016

Jatinder Singh

...Appellant

Versus

Sunder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Kiran Kumar Madan, Advocate,
for the applicant/appellant.

Mr. Amit Jain, Advocate, for
Mr. Vivek Goyal, Advocate,
for the respondent.

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NARESH KUMAR SANGHI, J.

Learned counsel for the parties are in unison that present appeal can be disposed of without calling the record from learned Court below, at this stage.

The brief facts of the case are that the appellant/complainant-Jatinder Singh, had filed a complaint under Section 138 of Negotiable Instruments Act, 1881, against respondent-Sunder Singh. After the summoning of the respondent, the appellant/complainant could not appear before learned Trial Court on 29.05.2013, and the complaint was

dismissed for want of prosecution. The order passed by learned Trial Court is as under:

“Court notice issued to the complainant received back duly served, but the complainant is not present. Case called several times since morning. Now , it is 12.30 p.m. No more wait is justified. The conduct of the complainant shows that he is not interested in perusing the present complaint. Accordingly, the present complaint is dismissed for want of prosecution. The accused is acquitted for the allegations levelled against him. His bail bond and surety bond also stand discharged. After doing needful, file be consigned to the record room.”

Learned counsel for the appellant contends that at the time of filing of the complaint and thereafter, the appellant/complainant regularly appeared before learned Trial Court, except on 29.05.2013. Since, he had noted down the wrong date and, as such, he defaulted in appearance before learned Court below on 29.05.2013. He further submits that

even otherwise, for non-appearance of the appellant/complainant for one date only, learned Trial Court should not have dismissed the complaint. In support of his contentions, learned counsel for the petitioner has placed reliance on **Mohd. Azeem v. Venkatesh and another** 2002(8) Scale 331 (SC), **Shiv Kumar v. Mohd. Saghir** 1997(1) R.C.R.(Criminal) 709 (Delhi) (DB) and **Manjit Kaur v. State of Punjab and Anr.** 2006(4) R.C.R. (Criminal) 680 (P&H).

Learned proxy counsel for the respondent though, opposed the prayer of learned counsel for the appellant, but could not justify the impugned order.

After hearing learned counsel for the parties, going through the facts of the case and law cited hereinabove, the present appeal is accepted and the impugned order, dated 29.05.2013, is set aside. Learned Trial Court shall proceed with the trial from the stage it was dismissed in default.

The parties to the *lis* shall appear before learned Trial Court on 18.03.2016 at 10:00 a.m.

(NARESH KUMAR SANGHI)
JUDGE

February 24, 2016
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