

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1324-SBA-2005
Date of Decision:28.09.2017

PARAS RAM

.....APPELLANT

V/S

HOSILA PARSHAD

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: None

A.B. CHAUDHARI, J. (ORAL)

Original complainant had preferred the present appeal against order dated 25.10.2004 made by the JMIC, Chandigarh in complaint No.400 of 07.09.2001, under Section 138 of Negotiable Instruments Act, 1881, by which the complaint was dismissed and the accused was discharged for want of prosecution by the complainant.

None appears for the parties.

I have perused the impugned order. I reproduce the said order as under:-

***“Present: None for the complainant
Accused on bail***

It is 3.30 PM. Case called several time. Neither complainant nor his counsel present. Hence, this complaint is dismissed for want of prosecution. Accused is discharged. File be consigned to R.R.

***Announced:
Dated: 25.10.2004***

***Sd/-
Judl. Magistrate I Class, Chandigarh”***

Perusal of the above order clearly shows that the complainant did not appear before the trial Court and therefore, the complaint was dismissed for want of prosecution and consequently, the accused was discharged. In my opinion, the trial Court

could have adjourned the proceedings in view of the ground no.2 raised in the present appeal, which reads thus:-

“2. That the learned trial Court has erred in law and discharged/acquitted that accused on the ground of non-appearance of the appellant/petitioner and dismissed the case when the same was fixed for final arguments and the appellant/petitioner has proved the case beyond any reasonable doubt.”

It is seen from the above ground that the criminal case in question was fixed for final arguments and therefore, the criminal case could have been decided on merits rather than dismissing the same for want of prosecution in the absence of complainant and his counsel. However, when the complainant had engaged an Advocate, it was for the Advocate to address the arguments on the date of final hearing and therefore, it was the Advocate who was at fault by not appearing. Therefore, in my opinion, for the fault of the Advocate, the complainant should not suffer.

In that view of the matter, appeal is partly allowed. Impugned order dated 25.10.2004 is quashed and set aside. Proceedings in criminal case No.400 of 07.09.2001 are sent back to the trial Court for fresh hearing and disposal in accordance with law. Trial Court shall issue summons to both complainant as well as accused and shall endeavour to decide the same on merits as expeditiously as possible.

(A.B. CHAUDHARI)
JUDGE

28.09.2017
raj/Anjal

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No