

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

CRA-AS-194-2017

Date of decision:-15.11.2017

M/s Saini Auto World and another

...Appellants

Versus

Shri Rajiv Kumar

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.S.S. Behl, Advocate
for the appellants.

None for the respondent.

H.S. MADAAN, J.

Complainant M/s Saini Auto World through Sushil Saini, Proprietor of M/ Saini Auto World, # 9, Rajdeep Nagar, Near Tangri Bridge, Jagadhri Road, Ambala Cantt. had filed a complaint against accused Rajiv Kumar under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the Act).

It is stated that accused was summoned and he put in appearance. When the complaint was fixed for 14.10.2014, recording that none was present in the Court on behalf of the complainant and then it was state of affair for the second time and further that Court notice issued to the complainant was received back with the report that no such person had been residing at the given address, the complaint was dismissed for want of prosecution.

Feeling aggrieved, the complainant has approached this Court moving application under Section 378(4) Cr.P.C. for grant of leave to file an appeal.

Notice was issued to respondent – accused, who had initially put in appearance through counsel but subsequently absented. Vide order dated 27.10.2017, the said leave was granted.

I have heard learned counsel for the appellant besides going through the record.

It is contended that non-appearance of the complainant through some authorized person/counsel in the Court of Judicial Magistrate was not intentional but due to wrong noting down of the date. The explanation seems to be plausible. Even otherwise, it is always desirable that a lis should be decided on merits rather than non-suiting the party on technical grounds. I find merit in the appeal, the same is accordingly accepted and complaint dismissed for non-prosecution vide order dated 14.10.2014 is ordered to be restored at its original number and order dated 14.10.2014 is set aside. The complainant through counsel is directed to appear in the Court of Judicial Magistrate Ist Class, Ambala on 12.12.2017. The trial Magistrate would issue notice to accused and secure his presence and thereafter proceedings be started from the stage which was when the complaint had been dismissed vide impugned order.

(H.S.MADAAN)
JUDGE

15.11.2017
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No