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

**CRM-A No.837-MA of 2013  
Date of Decision: 06.02.2017**

**INDUSIND BANK LTD**

**.....Appellant**

**Vs**

**MAHABIR SINGH**

**.....Respondent**

**CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Ashwani Talwar, Advocate  
for the appellant.

None for the respondent.

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**RAJ MOHAN SINGH, J. (Oral)**

[1]. Petitioner has challenged order dated 02.08.2013 passed by the Judicial Magistrate Ist Class, Hisar, whereby the accused was acquitted after dismissing the complaint in default for non-appearance of the complainant. The application for restoration of the complainant was also dismissed vide order of the even date.

[2]. Learned counsel for the appellant by referring to the numerous zimni orders on record argued that the presence of the accused was sought to be secured through proclamation under Section 82/83 Cr.P.C for 23.02.2012. Ultimately,

accused-respondent surrendered before the Court on 23.05.2012 and thereafter the case was fixed for serving notice of accusation upon the accused. In the process of securing presence of the accused, 42 effective proceedings were undertaken by the trial Court prior to surrender of the accused in the Court. The complainant remained present on each and every date.

[3]. Notice of accusation was served on 06.07.2012. The accused pleaded not guilty and claimed trial. Thereafter, the case was fixed for complainant's evidence. The case was fixed for cross-examination of the complainant's witness No.1 on number of occasions. During the intervening period, even the case was fixed for exploring the possibility of compromise. The case was listed on 13.12.2012, 24.12.2012 and 16.01.2013, however the complainant's witness was not cross-examined by the accused. Even the accused did not turn up on 16.01.2013.

[4]. The accused was ordered to be summoned through non-bailable warrants. The accused did not turn up even on 16.02.2013 and 13.03.2013. It was only on 16.04.2013, the accused appeared in the Court and he was granted bail. Thereafter case was adjourned for 17.05.2013 for evidence of the complainant.

[5]. Learned counsel submitted that in the light of attending

facts and circumstances, the passing of order dated 17.05.2013, directing the complainant to adduce evidence on his own responsibility was somehow a harsh order, keeping in view the number of efforts made by the Court to secure the presence of the accused at the first instance and thereafter, he again absconded. At least, reasonable opportunity should have been granted to the complainant to lead evidence. Learned counsel further submitted that accused has virtually played hide and seek with the Court by not appearing in the trial Court in time as well as before this Court despite service through his wife.

[6]. I have heard learned counsel for the appellant.

[7]. Perusal of the interlocutory orders on record reveals that on 17.05.2013, the complainant was represented by proxy counsel as no complainant's witness was present. The case was adjourned for complainant's evidence on his own responsibility for 31.05.2013. On 31.05.2013, last opportunity was given to the complainant as no complainant's witness was present in the Court and the case was adjourned for 09.07.2013.

[8]. On 09.07.2013, the case was further adjourned for 02.08.2013 for the same purpose and it was observed that in the event of no evidence, the complainant's evidence shall be

deemed to be closed. On 02.08.2013, the impugned order came to be passed.

[9]. In the present appeal, the respondent has been served through his wife. His wife undertook to inform him as per the report of the office. He has not turned up despite the number of adjournments on record. Service was taken to be complete on 08.01.2016.

[10]. In view of above, I have no hesitation to observe that the respondent has intentionally preferred not to appear before this Court.

[11]. Consequently, in view of facts and circumstances on record, I deem it appropriate to set aside the impugned orders and restore the complaint before the trial Court. Trial Court would grant two effective opportunities to the complainant/appellant to complete its evidence in accordance with law. In view of aforesaid, appeal is accepted.

[12]. Certified copy of this order be sent to the trial Court. On receipt of copy of order, the trial Court shall fix a date for summoning of the parties and further proceedings as per law.

February 06, 2017

*Atik*

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)  
JUDGE**

Yes/No

Yes/No