

Kartar Singh
Vs.
Neelam Kumar

Present: Mr. Dheeraj Mahajan, Advocate
for the appellant.

Present application under Section 378(4) Cr.P.C. is for leave to file appeal against order of dismissal of complaint under Section 256 Cr.P.C. and acquittal of accused dated 26.08.2015 passed by the learned Judicial Magistrate Ist Class, Gurdaspur on the ground that a complaint filed under Section 138 of Negotiable Instruments Act was dismissed as complainant was not present.

Learned counsel for the applicant contended that the applicant and his counsel before trial Court wrongly noted the date of hearing as 21.11.2015 instead of 26.08.2015 and that is why he could not appear before the trial Court and his complaint was dismissed under Section 256 Cr.P.C. The non appearance of the applicant as well as his counsel on the date fixed before the trial Court was neither intentional nor deliberate.

Heard.

For ready reference, impugned order is as under :

*“Present : None for complainant
Accused Neelam Kumari is on bail in person with
counsel Sh. R.P. Mahajan, Adv.*

“Case taken up again after lunch. Despite calling the case number of time since morning. Neither complainant nor his counsel/pleader has turned up. It is already 04.00 PM. Case is again called, but none has turned up on behalf of complainant. Further, perusal of file has revealed that since 10.01.2014, the case is lingering on for evidence of complainant Kartar Singh. But despite availing a slew of opportunities, complainant has miserably failed to conclude his evidence. On last date of hearing even cost of Rs.500/- was imposed on complainant for causing delay in concluding evidence. That cost is also not paid. So all

these facts, clearly shows that complainant is not willing to prosecute the present complaint. Hence, finding no reason to adjourn the present case for another date, present accused Neelam Kumari is acquitted and complaint is ordered to be dismissed under Section 256 of Code of Criminal Procedure, 1973. File be consigned to Record Room.”

*Pronouncement in open Court.
Dated :26.08.2015*

*(Ravipal Singh)
Judicial Magistrate Ist Class,
Gurdaspur*

In view of the grounds detailed in the application, the present application is allowed. Leave granted. Appeal admitted.

Registry is directed to list the appeal as per roster.

**(SHEKHER DHAWAN)
JUDGE**

18.08.2017.
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