

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

**Crl. Misc. No.M-1029 of 2017 (O&M)
Date of Decision: January 16, 2017**

Anil Yadav

.....PETITIONER(s).

VERSUS

Pradeep

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Manish Soni, Advocate
for the petitioner (s).

SURINDER GUPTA, J.
Heard.

The complaint filed by petitioner under Section 138 of Negotiable Instruments Act, 1881 was dismissed due to non appearance of petitioner-complainant.

Learned counsel for the petitioner has argued that complaint was fixed for 08.09.2016 on which date it was adjourned to 27.09.2016 but the Clerk of counsel engaged by the petitioner-complainant in lower Court noted the date wrongly. Even otherwise, the presence of petitioner-complainant on 27.09.2016 was not required in view of the fact that learned Magistrate had exempted the personal appearance of the accused on his application. Without taking into account this fact, the complaint was dismissed.

Perusal of the order dated 27.09.2016 shows that on that day,

none had appeared on behalf of petitioner-complainant. On an application filed by counsel for the respondent-accused, personal appearance of respondent-accused was also exempted and the Court proceeded to dismiss the complaint due to non-appearance of complainant. When the accused had not appeared on a particular date and his presence in Court had been exempted, the trial Court by exercising power under Section 256 Code of Criminal Procedure could adjourn the complaint for next date instead of dismissing it due to non-appearance of complainant by exempting his presence for that day.

Keeping in view the above facts, this petition is allowed. Impugned order 27.09.2016 is set aside. The trial Court is directed to take up the complaint titled as “Anil Yadav Vs. Pradeep” and proceed to decide it in accordance with law.

The order has been passed in the absence of respondent-accused to avoid unnecessary delay and expenses. A copy of this order be conveyed to the respondent. In the event of respondent having any objection, he may file application to that effect, which on receipt be listed for hearing.

January 16, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No