

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

CRM No.M-22661 of 2016 (O&M)

Date of Decision: October 24, 2017

M/s Akai Consumer Electronics India Ltd.

...Petitioner

VERSUS

Ramesh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Varun Mittal, Advocate for
Mr.Vikas Mohan Gupta, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondent State of Punjab for quashing the order dated 23.02.2016 passed in complaint No.95 dated 18.09.2014 passed by learned Judicial Magistrate Ist Class, Batala.

I have heard learned counsel for the petitioner and have gone through the record.

Learned counsel for the petitioner argued that the petitioner filed the complaint against the accused-respondent under Section 138 of the Negotiable Instruments Act. The accused was summoned in the complaint but did not appear. On one date, the complainant-petitioner absented from the proceedings and the complaint was dismissed in default.

The perusal of the record shows that summoning order has

already been passed in this complaint by the Court. Section 256 Cr.P.C. provides as under:-

“256. Non-appearance or death of complainant:-

(1) If the summons has been issued on complaint and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

As per above Section 256 Cr.P.C., dismissal of the complaint in default after summoning amounts to acquittal and against acquittal, appeal is maintainable but the petitioner has not filed the appeal, rather filed petition under Section 482 Cr.P.C.

Therefore, the present petition is not maintainable and the same is dismissed. However, the petitioner is at liberty to file appeal against acquittal, as per law, if so desired and if such appeal is filed within reasonable time, then the time spent while pursuing the present petition, shall be condoned.

October 24, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No