

226/290
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-2171-MA-2016 in/and
CRA-AS-39-2019 (O&M)
Date of decision : 22.1.2019

Ashish

.....Appellant.

Versus

Dariya Singh

..... Respondent.

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Akshay Jain, Advocate for the appellant.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

CRM-A-2171-MA-2016

Despite service, none has come present on behalf of the respondent.

After hearing learned counsel for the appellant, leave to appeal is granted.

CRA-AS-39-2019

By way of filing the present appeal, appellant has challenged the order of acquittal dated 27.9.2016, passed by Judicial Magistrate Ist Class, Sirsa dismissing the complaint filed under Section 138 of the Negotiable Instruments Act, 1881.

Notice of the application for leave to appeal was issued to respondent but despite service none has appeared on his behalf.

Learned counsel for the appellant contends that perusal of the impugned order shows that his counsel that he was present but complainant had informed that his counsel is in Bangalore and he cannot appear. The

Court insisted on his presence and dismissed the complaint by invoking the provisions of Section 256 of the Cr. P.C. He further contends that in this case preliminary evidence was complete. Accused was summoned and infact the case was fixed for appearance of the accused which was sought to be procured throughailable warrants. Therefore, presence of the counsel was sufficient for pursuing the complaint.

After going through the impugned order dated 27.9.2016, passed by learned Judicial Magistrate Ist Class, Sirsa, I am of the view that since counsel was present and the case was fixed for summoning of the accused, complaint could not have been dismissed for want of appearance of the complainant as was done by the trial Court. Hence, the impugned order dated 27.9.2016, passed by learned Judicial Magistrate Ist Class, Sirsa is set aside and the case is remitted back for deciding the same in accordance with law from the stage it was dismissed.

Appeal is allowed.

(KULDIP SINGH)
JUDGE

22.1.2019
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No