

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

229

CRA-S-169-SB-2010

Decided on : 29.04.2019

Surinder Singh Oberoi

... Petitioner

Versus

Suresh Kumar

.. Respondent

CORAM : HON'BLE MR.JUSTICE MANOJ BAJAJ

Present:- Mr.Chandan Singh Advocate
for the appellant.
Mr.Samrit Gill, Advocate for
Mr.Sandeep Arora, Advocate for the respondent.

Manoj Bajaj, J. (Oral)

Challenge is to the order dated 11.8.2007 passed by learned Judicial Magistrate 1st Class, Jalandhar, whereby the trial Court has proceeded to dismiss the complaint filed by the complainant under Sections 138/142 of the Negotiable Instruments act, 1881 read with Section 420 of IPC as the complainant had not appeared in the Court.

Learned counsel for the appellant has contended that since cross-examination of complainant was ordered to be treated 'nil' by Court order dated 15.2.2007, application was moved by accused for one opportunity. The arguments were completed on the application moved by the respondents-accused and only the order was to be announced on the same date i.e. 19.5.2007. However, the appellant-complainant was surprised when he received a notice dated 11.8.2007 for appearance in the Court.

It is contended that the petitioner-complainant was under the impression that case is pending for passing of the orders, therefore, his presence was not required. This Court finds that the complainant-petitioner had already discharged the onus and the complainant already

stood cross-examined by the accused on 15.2.2007. A perusal of the impugned order would reveal that the trial Court proceeded to dismiss the complaint on the ground that no one has represented the complainant. Even the accused or his counsel was not represented and the presence of the complainant on the said day would have been formal. It has already been noticed that the complaint was at advanced stage and nothing much remained to be done by the complainant except for putting in formal appearance. The Court ought to have exercised the other options available under Section 256 Cr.P.C. and therefore, the impugned order is not sustainable.

The impugned order dated 11.8.2017 strictly does not amount to acquittal as the Court has dismissed the complaint only on account of absence of the complainant. Therefore, the present petition is treated a petition under Section 482 Cr.P.C.

Resultantly, the impugned order dated 11.8.2017 passed by the trial Court, is set aside. The complaint is restored to its original number. The parties are directed to appear before the trial Court on 27.5.2019 and the trial Court shall thereafter proceed the complaint in accordance with law.

The petition is disposed off.

29.04.2019
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[**MANOJ BAJAJ**]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No