

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

**CRA-AS-166 of 2019(O&M)
Date of Decision: December 18, 2019**

Hansraj

...Appellant

Versus

Sajjan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Manish Soni, Advocate
for the appellant.

Mr.A.S.Yadav, Advocate for
Mr.Neeraj Yadav, Advocate
for the respondent.

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HARINDER SINGH SIDHU, J.

This appeal has been filed against the judgment dated 20.11.2015 of the learned Judicial Magistrate Ist Class, Gurgaon, whereby, the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881 (herein for short 'the Act') has been dismissed for want of prosecution. The respondent – accused was acquitted in the case.

The appellant had filed the complaint titled “Hansraj vs. Sajjan Singh” before the Judicial Magistrate Ist Class, Gurgaon. The respondent – accused was summoned by the Court vide summoning order dated 13.08.2015. Vide order dated 09.11.2015 the learned Trial court issued notice of accusation to the respondent – accused and fixed the case on 20.11.2015 for recording of appellant's (complainant therein) evidence. As the appellant failed to appear on the said date, the complaint was dismissed

for non-prosecution.

Ld. Counsel for the appellant relies on the judgment of the Supreme Court in Mohd.Azeem vs. Avenkatesh and another, 2002(7) SCC 726 to contend that non-appearance of the complainant on a single date in a case under Section 138 of the Act, would be no ground to dismiss the complaint.

In the aforesaid case, the Hon'ble Supreme Court held that the Ld. Magistrate committed an error in acquitting the accused only for absence of the complainant on one day.

Ld. Counsel for the appellant states that he did not appear on the date fixed as his counsel had noted a wrong date.

In the facts and circumstances, this appeal is allowed. The impugned order dated 20.11.2015 is set aside. The matter is remitted back to the Trial Court to proceed further in accordance with law.

The parties shall appear before the learned Trial Court/Chief Judicial Magistrate, Gurgaon on 08.01.2019 for further proceedings.

December 18, 2019

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No