

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Appeal No. AS-184 of 2015 (O&M)

Date of decision : 08.12.2015

Krishan Kumar

..... Appellant

versus

Jagpal

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. S.K. Tripathi, Advocate
for the appellant

None for the respondent

ANITA CHAUDHRY, J. (ORAL)

By way of filing Crl. Misc. No. 20680 of 2015, appellant has prayed for granting leave to appeal against the order of acquittal and for treating the present petition as appeal.

Allowed as prayed for. Leave granted. The petition has been treated as Criminal Appeal and Crl. Appeal No. AS-184 of 2015 has been assigned by the Registry.

This is an appeal seeking quashing of the order dated 04.07.2014 vide which the order passed by the Magistrate has been challenged as the complaint filed by the appellant had been dismissed for non-appearance.

Record of the Lower Court had been received.

Notice had been sent to the respondent. An appearance was made on behalf of the respondent on 07.01.2015, thereafter no one had put in appearance on behalf of respondent.

A complaint had been filed under the Negotiable

Instruments Act for dishonour of cheque. Preliminary evidence was recorded and the accused was summoned. On appearance notice of accusation was served thereafter evidence was led by the prosecution.

The complainant completed his evidence on 23.12.2013. On the same day statement of the accused under Section 313 Cr.P.C. was recorded and the case was posted for defence. On 14.5.2014, the complainant could not appear and an application for his exemption was filed which was allowed and the case was adjourned to 04.07.2014. There was no appearance on behalf of the complainant on 04.07.2014 and the complaint was dismissed for want of prosecution.

Learned counsel for the appellant urges that a wrong date had been noted and when the complainant appeared in the Court on 07.07.2014 he found that the case had been dismissed for non-prosecution on 04.07.2014. He further urges that the Court should have given atleast one opportunity and the complainant had been religiously appearing on each date and the complaint had been dismissed for one default.

In **Mohd. Azeem Vs. A. Venkatesh & Anr., 2002(7) SCC 726**, the Hon'ble Apex Court had held that the complaint ought not to have been dismissed by the Court on account of single default on the part of the complainant.

The instant appeal is allowed and the order dated 04.07.2014 passed by the learned Magistrate dismissing the complaint of the appellant in default, is set aside subject to the

condition that there shall be no further default on the part of the complainant. The matter is remitted back to the trial court with a direction to restore the complaint to its original number and then to further proceed with the case from the stage, where it was dismissed. The complainant, through its counsel, is directed to appear in the trial Court on 21.12.2015. He would not move any application for exemption here after and would appear on each date of hearing.

Lower Court record be sent back.

December 08, 2015

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**(ANITA CHAUDHRY)
JUDGE**