

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-191-MA-2014
Date of decision: 17.07.2015

Pinki Soni

... Applicant

Vs.

State of Haryana and anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Himanshu Puri, Advocate
for the applicant.

Mr. N.S. Sodhi, Advocate
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Applicant, by way of instant application under Section 378 (4) of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks leave to file appeal against the impugned judgment of acquittal.

Notice of motion.

Mr. N.S. Sodhi, Advocate appears and accepts notice on behalf of respondent No.2.

Learned counsel for the applicant submits that the complaint filed by the applicant was dismissed by learned Judicial Magistrate 1st Class,

Gurgaon, vide impugned order dated 27.03.2012, for want of prosecution. There was a bonafide reason for non-appearance of the applicant-complainant because her counsel noted the wrong date of hearing and due to said reason, applicant could not put appearance before the learned trial Court on 27.03.2012. He further submits that when the applicant filed the criminal appeal before the learned Sessions Judge, Gurgaon along with an application for condonation of delay of about 02 months, caused because of the abovesaid bonafide reason, even the said appeal was dismissed by the learned Sessions Judge only on account of delay. Thus, both the learned Courts below did not decide the case on merits, thereby causing serious prejudice to the applicant. He prays for setting aside the impugned orders, by allowing the present application.

On the other hand, learned counsel for respondent No.2 submits that there was no error of law committed by either of the learned Courts below. The impugned orders passed by the learned Courts below were fully justified on facts as well as in law and the same deserve to be upheld. Applicant failed to explain the delay in filing the appeal. He prays for dismissal of the present application.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant application deserves to be allowed, for the following more than one reasons.

It has gone undisputed on record that both the impugned orders rendered by the learned Courts below have not been passed on merits of the

case. The learned trial Court dismissed the complaint of the applicant for want of prosecution, whereas the learned Sessions Judge dismissed the appeal of the applicant on account of delay. It is the settled proposition of law that every Court of law must make an endeavour to decide the lis between the parties, on its merits, until and unless, contrary is pleaded and proved, making out an exceptional case for dismissal on technicalities, like delay. In the present case, both the learned Courts below fell in serious error of law, while passing their respective impugned orders and the same cannot be sustained, having been found suffering from patent illegality.

During the course of arguments, when a pointed question was put to learned counsel for respondent No.2 as to how both the impugned orders are justified either on facts or in law, he had no answer and rightly so, it being a matter of record. Under these circumstances, it goes without saying that the impugned orders have resulted in serious miscarriage of justice and the same cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders passed by both the learned Courts below have been found to be suffering from patent illegality, instant application deserves to be allowed.

Consequently, impugned order dated 27.03.2012 passed by learned Judicial Magistrate 1st Class, Gurgaon as well as the order dated 08.09.2012 passed by learned Sessions Judge, Gurgaon are hereby set aside. Complaint of the applicant would stand restored to its original number. The

case is remitted back to the learned trial Court with a direction to decide the same on merits, after granting due opportunities to both the parties, in accordance with law.

Resultantly, with the abovesaid observations made and directions issued, instant application stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

17.07.2015
vishnu