

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.M-34379 of 2012

.....

Date of decision:19.2.2015

Dr. Subhash Arora

...Petitioner

v.

M/s Pal Infrastructure & Developers Private Ltd. and another

...Respondents

....

(2) Criminal Misc. No.M-34421 of 2012

.....

Jai Dev Singh

...Petitioner

v.

M/s Pal Infrastructure & Developers Private Ltd. and another

...Respondents

....

(3) Criminal Misc. No.M-34422 of 2012

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Jai Dev Singh

...Petitioner

v.

M/s Pal Infrastructure & Developers Private Ltd. and another

...Respondents

....

(4) Criminal Misc. No.M-34496 of 2012

.....

Dr. Subhash Arora

...Petitioner

v.

M/s Pal Infrastructure & Developers Private Ltd. and another

...Respondents

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(5) Criminal Misc. No.M-34550 of 2012

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Vikas Kumar

...Petitioner

v.

M/s Pal Infrastructure & Developers Private Ltd. and another

...Respondents

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(6) Criminal Misc. No.M-34551 of 2012

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Vikas Kumar

...Petitioner

v.

M/s Pal Infrastructure & Developers Private Ltd. and another

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Mohan Singh Rana, Advocate for the petitioner in Cr.
Misc. Nos.M-34379 and 34496 of 2012.

Mr. S.K. Panwar, Advocate for the petitioners in
Cr. Misc. Nos.M-34441, 34442, 34550 and 34551 of 2012.

None for the respondents.

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Inderjit Singh, J.

This order will dispose of the above mentioned six criminal miscellaneous petitions filed under 482 Cr.PC. for quashing the impugned orders dated 28.7.2012 passed by learned Sessions Judge, Gurgaon and impugned orders dated 1.2.2012 passed learned Judicial Magistrate Ist Class, Gurgaon, vide which the revision petitions as well as the complaints filed by the petitioners have been dismissed wrongly, illegally, arbitrarily and without going into the facts and circumstances of the cases, therefore, the same are liable to be quashed/set aside. It has been further prayed that

the complaints of the petitioners may kindly be restored at its original numbers, in the interest of justice. These petitions are taken up together as there is common question of fact and law involved in all these petitions.

In all these petitions, the respondents are the same though the petitioners are different.

In these cases, notice of motion was issued and the learned counsel for the respondents earlier appeared, but today none appeared on behalf of them in any of the petitions.

All these complaints were pending before the learned Judicial Magistrate Ist Class, Gurgaon and on one date for the non-appearance of the complainants, these complaints filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') have been dismissed for want of prosecution vide the impugned orders.

The learned counsel for the petitioners argued that the petitioners were appearing in these complaint cases and their absence on one of the dates was not intentional. Neither the petitioners nor their counsel could appear before the trial Court on 1.2.2012 due to the fact that wrong date was noted i.e. 2.2.2012 instead of 1.2.2012. Learned counsel for the petitioners argued that the petitioners in these proceedings were regularly appearing in the Court and there was no mala fide intention for not appearing before the trial Court. A perusal of the record also shows that, in no way, by the absence, the complainants/petitioners are to be benefitted in these petitions nor there is anything on the record to show that there was any mala fide intention on the part of the complainants/petitioners for their

absence from the proceedings. The complainants/petitioners have given the ground in the petitions that the complainants and their counsel could not appear before the Court. There was no necessity to dismiss the complaints vide impugned orders on that day. The Court has also not considered the fact that earlier the complainants were appearing in these cases regularly. The absence of the complainants on one date in the complaint cases is no ground to dismiss these complaints.

In the facts and circumstances of the present cases, I find that the impugned orders passed by the learned Judicial Magistrate Ist Class, Gurgaon, has caused miscarriage of justice. Similarly, dismissal of the revision petitions by the learned Sessions Judge, Gurgaon also amounts to miscarriage of justice. If these orders are not set aside, the complainants/petitioners will suffer irreparable loss. It is settled law that rights of the parties should be decided on merit as far as possible. The Court should do substantial justice between the parties and should not go into the technicalities of the law. Where technical consideration and merit or cause of substantial justice are pitted against each other, the cause of merit and substantial justice is to prevail.

Learned counsel for the petitioners placed reliance on the judgment of Hon'ble Supreme Court in Punjab State Warehousing Corporation Faridkot v. M/s Sh. Durga Ji Traders and others, 2012 (1) R.C.R. (Cr.) 358, on the point whether petition under Section 482 Cr.P.C. is maintainable. I have gone through this judgment and in para 9 of this judgment, it has been held as under:-

“9. Bearing in mind the afore-stated legal position in regard to the scope and width of the power of the High Court under Section 482 of the Code, we are of the opinion that the impugned decision is clearly indefensible. As noted above, the High Court has rejected the petition under Section 482 of the Code on the ground of availability of an alternative remedy without considering the seriousness of the nature of the offences and the fact that the Trial Court had dismissed the complaint on a hyper technical ground viz. since the complainant had been appearing in person, despite order dated 16th April 1999, exempting him from personal appearance, the said exemption order became redundant and the complainant should have sought a fresh exemption from personal appearance. We feel that such a view defies any logic. An order of exemption from personal appearance continues to be in force till it is revoked or recalled. We are convinced that in the instant case, rejection of appellant's petition under Section 482 of the Code has resulted in miscarriage of justice. Availability of an alternative remedy of filing an appeal is not an absolute bar in entertaining a petition under Section 482 of the Code. As aforesaid, one of the circumstances envisaged in the said Section, for exercise of jurisdiction by the High Court is to secure the ends of justice. Undoubtedly, the Trial

Court had dismissed the complaint on a technical ground and therefore, interests of justice required the High Court to exercise its jurisdiction to set aside such an order so that the Trial Court could proceed with the trial on merits.”

Learned counsel for the petitioners also placed reliance on the judgment of Hon'ble Supreme Court in Mohd. Azeem v. A. Venkatesh and another, (2002) 7 SCC 726, in which it is held that one singular default in appearance on the part of complainant, dismissal of complaint is not proper. Cause shown by the complainant that he wrongly noted the date was not disbelieved and, therefore, it was a valid ground for restoration of the complaint. I have gone through this judgment, which fully applies to the facts of the present cases.

Learned counsel for the petitioners also placed reliance on the judgment of Hon'ble Supreme Court in Aseem Shabanli Merchant v. Brij Mehra and another, (2005) 11 SCC 412 on the same point, where it is held that dismissal of the complaint for non-prosecution challenged to by brother of the complainant whether such orders can be recalled, it was held that having regard to the facts and circumstances, interests of justice required that the order of the Magistrate acquitting the accused for non-prosecution, as affirmed by the High Court, deserved to be recalled so that the complaints could be tried on merits. The Hon'ble Supreme Court further held in this case that there is no hard and fast rule for recalling of such orders.

On the same point, learned counsel for the petitioners also

placed reliance on the judgments of this Court in Narender Parashar v. Jagbir Singh, 2009 (3) R.C.R. (Cr.) 246; Neh Pal Sharma v. Bijender Singh, 2009 (2) R.C.R. (Cr.) 751 and Purushotam Mantri v. Vinod Tandon alias Hari Nath Tandon, 2009 (1) R.C.R. (Cr.) 442; Om Parkash v. M/s Golden Forest India Ltd., 2008 (4) R.C.R. (Cr.) 445. I have gone through all these judgments, which fully apply to the facts of the present cases.

Therefore, from the above, I find merit in all these petitions and the same are allowed. The impugned orders passed by the learned Judicial Magistrate Ist Class, Gurgaon, dismissing the complainants as well as the impugned orders passed by the learned Sessions Judge, Gurgaon, dismissing the revision petitions are set aside.

All these complaints are ordered to be restored at the stage from where it were dismissed by the trial Court. The trial Court is directed to proceed further as per law after giving notice to the parties concerned.

February 19, 2015.

(Inderjit Singh)
Judge

hsp