

THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

Crl.Revision No.2115 of 2014 (O&M)
Decided on : 12.03.2015

Sukhbir

... Petitioner

Versus

M/s Mahindra and Mahindra Financial Services Ltd.

... Respondent

CORAM : HON'BLE MR.JUSTICE HARI PAL VERMA

Present : Mr.J.S.Chahal, Advocate for the petitioner.
Mr.Nitin Thatai, Advocate for the respondent.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Hari Pal Verma, J. (Oral)

The petitioner has filed the present revision petition impugning the judgment dated 14.05.2014 passed by learned Additional Sessions Judge, Chandigarh whereby the appeal filed by the petitioner against the judgment/order dated 23.05.2013 passed by learned Judicial Magistrate, 1st Class, Chandigarh convicting him under Section 138 of the Negotiable Instruments Act, 1881 was dismissed for non-prosecution. Learned appellate Court has directed the trial Court to procure the presence of the petitioner by way of issuance of warrant of arrest and put him behind the bars so as to undergo the sentence awarded by it.

Learned counsel for the petitioner has argued that the impugned judgment has been passed not only without going into the relevant record but in a hasty manner. The court has not considered the

fact that clerk of counsel for the petitioner has wrongly noted the date i.e. 16.05.2014 in stead of 14.05.2014. It is in these circumstances, the petitioner could not appear on 14.05.2014 and the appeal was dismissed on the same date.

Learned counsel for the petitioner further argued that it is a settled law that a criminal case can not be dismissed for non-prosecution. In support of his contention, learned counsel for the petitioner relies upon the judgment of Hon'ble the Supreme Court in case titled as "Jaspal Singh Vs. State of Punjab", 2006(10) SCC 472.

On the other hand, learned counsel for the respondent has argued that since the petitioner had failed to appear before the court on the date fixed, the learned appellate Court has rightly dismissed the appeal for non-prosecution.

I have heard learned counsel for the parties.

Learned lower appellate court has undoubtedly dismissed the appeal for non-prosecution on the ground of non-appearance of the petitioner, but I find some substance in the argument raised by learned counsel for the petitioner wherein counsel has noted a wrong date by mistake. The appeal has been dismissed for non-prosecution and the submission of the learned counsel for the petitioner that clerk of the counsel for the petitioner had inadvertently noted down the wrong date i.e. 16.05.2014 in stead of 14.05.2014 carries weight. Therefore, there was a bona fide mistake on the part of counsel for the petitioner. Learned counsel for the respondent has not doubted the bona fide on the part of petitioner in non-appearance on the fixed date.

Accordingly, considering the judgment of Hon'ble Supreme

Court in *Jaspal Singh's* case (supra), the present revision petition is allowed and the order dated 14.05.2014 passed by learned Additional Session Judge, Chandigarh is set aside. The case is remitted back to the court of Additional Session Judge, Chandigarh with a direction for fresh decision of the case in accordance with law.

Parties are directed to appear before the learned Additional Session Judge, Chandigarh along with their counsel on 20.04.2015 and the learned appellate Court is directed to expedite the trial and decide the appeal within a period of six months after the date of appearance of the parties. The appeal is accepted subject to payment of Rs.2500/- as costs and the petitioner shall deposit the said amount at the time of his appearance before the lower appellate court on 20.04.2015.

With the above, present petition is allowed.

[Hari Pal Verma]
Judge

12.03.2015
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