

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.AS-25 of 2016 (O&M)
Date of decision: February 09, 2016

Sandeep Kumar

...Appellant

Versus

Raj Kiran Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Surinder Garg, Advocate
for the appellant.

Mr.Achin Gupta, Advocate
for the respondent.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the impugned judgment dated 01.04.2014 passed by learned Judicial Magistrate Ist Class, Faridkot, whereby the evidence of the complainant was closed by order and the accused was acquitted of the notice served upon him.

Notice of motion was issued and learned counsel for the respondent appeared and contested the appeal.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that when the case was fixed for evidence of the complainant on 01.04.2014, none appeared on behalf of the complainant and the Court closed the evidence of the complainant by holding that no ground is made to further adjourn the

case for awaiting presence of complainant or for his evidence and the accused was acquitted of the notice served upon him.

In the grounds of appeal, it is stated that real cause of non-appearance of the complainant as well as his counsel was that the complainant as well as his counsel noted the date as 04.04.2014 instead of 01.04.2014, on which date the case was taken up for hearing. It is also stated in the grounds of appeal that brief of the counsel as well as the diary entry of the counsel show that the date of case was noted down as 04.04.2014 instead of 01.04.2014.

Further, I find that in the absence of the evidence on record, the dispute between the parties could not be decided on merits.

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.

The Hon'ble Supreme Court in ***Mohd. Azeem v. A. Venkatesh and another, (2002) 7 SCC 726***, has 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.

The Hon'ble Supreme Court in ***Aseem Shabanli Merchant v. Brij Mehra and another, (2005) 11 SCC 412*** on the same point, has held that the 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.

In the facts and circumstances of the present cases, I find that the impugned judgment passed by the learned Judicial Magistrate 1st Class, Faridkot, has caused miscarriage of justice. The impugned order dated 01.04.2014 passed by learned JMIC, Faridkot is set aside.

Therefore, finding merit in the present appeal the same is allowed.

The complaint is ordered to be restored at the stage from where it was dismissed by the trial Court. The parties are directed to appear before the trial Court on 08.03.2016 and the trial Court is directed to proceed further as per law. Since, the complaint is of the year 2011, therefore, the complainant is directed to complete his evidence within two clear opportunities.

February 09, 2016
Vgulati

(INDERJIT SINGH)
JUDGE