

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.AS-26 of 2016 (O&M)
Date of decision: February 09, 2016

Subhash Chand Bhadana

...Appellant

Versus

M/s Kas Catererz and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Saneta, Advocate
for the appellant.

Mr.Saurabh Dalal, Advocate
for the respondents.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the impugned order dated 23.11.2013 passed by learned Judicial Magistrate Ist Class, Gurgaon, whereby the complaint filed by the appellant-complainant was dismissed in default for want of prosecution.

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.

Learned counsel for the appellant argued that the petitioner was appearing in the complaint case and his absence on

one of the date was not intentional. Neither the appellant nor his counsel could appear before the trial Court on 23.11.2013 as the counsel of the appellant had noted a wrong date on his brief.

The perusal of the record shows that, in no way, by the absence, the complainant/appellant is to be benefitted nor there is anything on the record to show that there was any mala fide intention on the part of the complainant/appellant for his absence from the proceedings. The complainant/appellant has given the ground in the appeal that he and his counsel could not appear before the Court as the counsel of the appellant had noted a wrong date on his brief. There was no necessity to dismiss the complaint vide impugned order on that day. The absence of the complainant on one date in the complaint case is no ground to dismiss this complaint.

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 case.

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.

On the same point, the Hon'ble Supreme Court has passed the judgments 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, Mantri v. Vinod Tandon alias Hari Nath Tandon, 2009 (1) R.C.R. (Cr.) 442; and Om Parkash v. M/s Golden Forest India Ltd., 2008 (4) R.C.R. (Cr.) 445***, which fully apply to the facts of the present cases.

In the facts and circumstances of the present cases, I find that the impugned order passed by the learned Judicial Magistrate Ist Class, Gurgaon, has caused miscarriage of justice. The impugned order dated 23.11.2013 passed by learned JMIC, Gurgaon 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.

February 09, 2016
Vgulati

(INDERJIT SINGH)
JUDGE