

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-3 of 2016 (O&M)

.....

Date of decision:11.1.2016

Raj Kumar Manekar

...Appellant

v.

Virender Singh Chauhan and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. R.S. Mamli, Advocate for the appellant.

Ms. Kshitija Mittal, Advocate for Mr. Pardeep Solath, Advocate
for respondent No.1.

Mr. Brijesh Sharma, Assistant Advocate General, Haryana for
respondent No.2-State.

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Inderjit Singh, J.

This appeal has been filed for quashing the impugned judgment dated 9.10.2013 passed by learned Sessions Judge, Gurgaon dismissing the criminal revision filed against the impugned order/judgment 10.6.2013 passed by learned Judicial Magistrate Ist Class, Gurgaon, dismissing the complaint of the appellant/complainant filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') against the accused/respondent on account of his non-appearance, resulting in acquittal of the accused/respondent.

In this case, notice of motion was issued. Ms. Kshitija Mittal, learned Advocate appearing for Mr. Pardeep Solath, learned Advocate has put in appearance on behalf of respondent No.1 and Mr. Brijesh Sharma, learned Assistant Advocate General, Haryana has appeared for respondent No.2-State and contested this appeal.

I have heard learned counsel for the appellant as well as learned counsel for respondent No.1 and learned Assistant Advocate General, Haryana for respondent No.2-State.

The brief facts of this case are that the complaint was fixed for 10.6.2013 for defence evidence, but the appellant could not appear in the Court as he had severe pain in the chest in the morning on that day and was admitted in Chirag Hospital, Near Railway Station, Gurgaon, where he was undergoing treatment. He had moved an application for exemption for appearance, but still the order was passed. The appellant had filed a complaint on 5.2.2013. The appellant was regularly attending the Court in the complaint.

From the record, I find that the applicant/complainant had been appearing regularly before the trial Court. From the record, it is clear that on 10.6.2013, as per interim order the complainant absented and the complaint has been dismissed for non-prosecution. The complainant filed criminal revision against the order dated 10.6.2013 before the learned Sessions Judge, Gurgaon, which has been dismissed vide order dated 9.10.2013.

The learned counsel for the appellant argued that the appellant

was appearing in this complaint case and his absence on one of the dates was not intentional. The appellant could not appear before the trial Court on 10.6.2013 due to the fact that he was admitted in hospital due to his ill-health and he had moved an application for exemption of his personal appearance. Learned counsel for the appellant argued that the appellant in these proceedings was 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 complainant/appellant is to be benefitted in this complaint 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 the complainant could not appear before the trial Court. There was no necessity to dismiss the complaint vide impugned order on that day. The Court has also not considered the fact that earlier the complainant was appearing in this case regularly. The absence of the complainant on one date in the complaint case is no ground to dismiss the complaint. The presence of the complainant, in no way, can be held as necessary.

In the facts and circumstances of the present case, I find that the impugned order passed by the learned Judicial Magistrate Ist Class, Gurgaon, has caused miscarriage of justice. As the dismissal of complaint amounts to acquittal under Section 256 Cr.P.C., therefore, revision against the order was not maintainable. If the order dated 10.6.2013 is not set aside, the complainant/appellant 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 appellant 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 appellant 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 appellant 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 this appeal and the same is allowed. The impugned order passed by the learned Judicial Magistrate Ist Class, Gurgaon, dismissing the complaint is set aside.

This complaint is ordered to be restored at the stage from where it was dismissed by the trial Court. The trial Court is directed to proceed further as per law. The parties are directed to appear before the learned Judicial Magistrate Ist Class, Gurgaon (trial Court) on 29.1.2016.

January 11, 2016.

(Inderjit Singh)
Judge

hsp