

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-52 of 2016

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Date of decision:18.3.2016

M/s STL Global Limited, Faridabad

...Appellant

v.

M/s Divyanshu Knit Feb, Gurgaon and another

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Adish Gupta, Advocate for the appellant.

Mr. Manoj Kumar Sood, Advocate for the respondents.

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Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc. No.A-555-MA of 2014 granting leave to file appeal vide order passed today by this Court.

Learned counsel for the parties agree that the appeal may be heard today itself. I have heard learned counsel for the parties in the appeal.

This criminal appeal has been filed against the impugned order dated 29.1.2014 passed by learned Judicial Magistrate Ist Class, Faridabad, vide which the complaint filed by M/s STL Global Limited against M/s Divyanshu Knit Feb and Ajya Patni, Proprietor of M/s Divyanshu Knit Feb-respondents under Sections 138 read with Section 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') has been

dismissed in default for want of prosecution and the accused have been acquitted of the allegations levelled against them.

It has been stated in the grounds of appeal that vide the impugned order dated 29.1.2014, the learned Judicial Magistrate Ist Class, Faridabad has grossly erred while passing the impugned judgment/order, vide which the complaint filed by the appellant-company against the respondent-company has been dismissed for non-prosecution and resultantly the respondents have been acquitted. The learned Judicial Magistrate Ist Class, Faridabad has acted in a haste to decide the matter without application of mind that the said complaint was pending since 2008 and it was contested by the appellant/complainant meticulously, but the learned Judicial Magistrate Ist Class was the one where the case was transferred for final adjudication, on the first date itself the learned Court below dismissed the same for non-prosecution without even issuing a notice of appearance to the complainant. Thus, the order is bound to be set aside as it cannot sustain in the eyes of law. Even the absence of the complainant or his counsel on the date of hearing cannot be a reason for acquitting the accused in a routine. It has been submitted that the complainant did not come to know on the day of the order that the case has been transferred to the Court of Shri Khatri Saurab, JMIC, Faridabad, as the same was before the Court of Smt. Shashi Bala Chauhan, JMIC, Faridabad and he appeared in that Court, but came to know that the case might not be listed as the file was not traceable. No list was displayed regarding the transfer cases on that day i.e. 29.1.2014. It has been stated that the complainant had been appearing before the

learned trial Court mostly on each and every date of hearing. The complaint was fixed on 29.1.2014 after transfer for the first day, but the learned counsel representing the appellant could not come to know that the case has been transferred to other Court. Later on he came to know that its aforesaid criminal complaint has been dismissed in default by the learned Judicial Magistrate Ist Class, Faridabad and thereby the respondents/accused have been acquitted in the aforesaid criminal complaint. Therefore, the impugned order is liable to be set aside as it (complainant) could not attend the Court on that day due to above circumstances. It has been further prayed that the complaint of the appellant may be restored to its original number, in the interest of justice.

In this case, notice of motion was issued and the learned counsel for the respondents has put in appearance and contested this appeal.

From the record, I find that the complaint was pending before the learned Judicial Magistrate Ist Class, Faridabad after it was transferred from other Court and on one date for the non-appearance of the complainant, this complaint filed under Section 138 read with Section 142 of the NI Act has been dismissed for want of prosecution vide the impugned order.

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. Neither the appellant-complainant nor its counsel could appear before the trial Court on 29.1.2014 due to the fact that this case was transferred from the Court to other Court. 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 case 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 and his counsel could not appear before the 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.

In the facts and circumstances of the present case, I find that the impugned order passed by the learned Judicial Magistrate Ist Class, Faridabad, has caused miscarriage of justice. If this order is not set aside, the complainant/appellant will suffer irreparable loss. It is settled law that the 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 case.

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 case.

Therefore, from the above, I find merit in this appeal and the same is allowed. The impugned order dated 29.1.2014 passed by the learned Judicial Magistrate Ist Class, Faridabad, 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 after giving notice to the parties concerned.

The parties are directed to appear before the trial Court on 26.4.2016.

March 18, 2016.

(Inderjit Singh)
Judge

hsp