

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-73 of 2016

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Date of decision:4.5.2016

Prince Electronics

...Appellant

v.

Nakli Ram

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rajesh Bansal, Advocate for the appellant.

Mr. J.P. Sharma, Advocate for the respondent.

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Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc. No.A-610-MA of 2013 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 31.10.2011 passed by learned Judicial Magistrate Ist Class, Karnal, vide which the complaint filed by Prince Electronics against Nakli under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') has been dismissed for non-prosecution and the accused has been acquitted of the notice of accusation under Section 138 of

the NI Act.

It has been stated in the grounds of appeal that the impugned order dated 31.10.2011 passed by the learned Judicial Magistrate Ist Class, Karnal is liable to be set aside being null and void. It has been mentioned that the complainant was appearing regularly before the trial Court and the case was fixed for 31.10.2011 for reply of application under Section 311 Cr.P.C. filed by the respondent, but the complainant and his counsel noted the next date as 18.11.2011 inadvertently instead of 31.10.2011 and when the appellant came present on 18.11.2011, then it came into the knowledge of the appellant and his counsel that the complaint has already been dismissed for non-prosecution on 31.10.2011. Aggrieved against the order dated 31.10.2011, the appellant preferred revision petition before the learned Additional Sessions Judge, Karnal, which was dismissed on 1.11.2012 by observing that the order dated 31.10.2011 being an order of acquittal, the revision petition is not maintainable and only application for leave to file appeal under Section 378(4) Cr.P.C. can be filed. 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. The real/main test is one of good faith and a short cut acquittal or disposal of the case cannot be resorted either as a matter of course or as a matter of routine. It has been further stated that the order passed by the learned Judicial Magistrate Ist Class, Karnal, is not sustainable in the eyes of law and is based upon conjectures and surmises and is liable to be set aside. It has been submitted that the complainant had been appearing before the learned trial Court mostly on

each and every date of hearing. The complaint was fixed on 31.10.2011 for reply of application under Section 311 Cr.P.C. filed by the respondent, but the learned counsel representing the appellant on 18.10.2011 wrongly noted down the next date fixed for reply as 18.11.2011 instead of 31.10.2011. On 18.11.2011, when the aforesaid counsel found that the case has not been listed, then only it was unveiled that the aforesaid criminal complaint has been dismissed for non-prosecution by the learned Judicial Magistrate Ist Class, Karnal and thereby the respondent/accused has been acquitted in the aforesaid criminal complaint. Therefore, the impugned order is liable to be set aside as he (complainant) was unable to attend the Court on that day. 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 respondent 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, Karnal, for reply to the application filed under Section 311 Cr.P.C. by respondent and on one date for the non-appearance of the complainant, this complaint filed under Sections 138 and 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 his counsel could appear before the trial Court on 31.10.2011 due to the fact that his

counsel noted a wrong date i.e. 18.11.2011 instead of 31.10.2011. 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, Karnal, 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

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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 31.10.2011 passed by the learned Judicial Magistrate Ist Class, Karnal, 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 30.5.2016.

May 4, 2016.

(Inderjit Singh)
Judge

hsp