

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.AS-8 of 2016 (O&M)
Date of decision: January 18, 2016

Deep Kishore

...Appellant

Versus

Shri Chhail Mohan Mishra and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vaibhav Prashar, Advocate for
Mr.Bharat Bhushan Sharma, Advocate
for the appellant.

Mr.Yash dev Kaushik, Advocate
for the respondent.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the impugned order dated 27.11.2014 passed by learned Judicial Magistrate Ist Class, Faridabad, whereby the complaint filed by the appellant-complainant was dismissed 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 dates was not intentional. Neither the appellant nor his

counsel could appear before the trial Court on 27.11.2014 as the counsel missed to enter the next date of hearing. 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.

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. 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 the case regularly. 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.

Learned counsel for the appellant placed reliance on the judgment of Hon'ble Supreme Court passed 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, wherein 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 passed 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***. I have gone through all these judgments, 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, Faridabad, has caused miscarriage of justice. The impugned order dated 27.11.2014 passed by learned JMIC, Faridabad 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 trial Court is directed to proceed further as per law after giving notice to the parties concerned.

January 18, 2016
Vgulati

(INDERJIT SINGH)
JUDGE