

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 1499 of 2016

Date of decision : April 22, 2016

Jaspal Kaur

....Petitioner

versus

M/s Brahm Financers

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Kamaljeet Singh Sidhu, Advocate, for the petitioner

Fateh Deep Singh, J. (Oral)

Heard Mr. Kamaljeet Singh Sidhu, Advocate, for the petitioner.

The present revisionist-petitioner Jaspal Kaur filed an appeal titled Jaspal Kaur vs Brahm Financers against judgment dated 18.10.2014 passed by the court of learned Judicial Magistrate Ist Class, Bathinda convicting her for commission of offence under section 138 of the Negotiable Instruments Act whereby she was sentenced to undergo RI for six months and to pay a fine of Rs 10,000/- and in default of payment of fine to further undergo RI for 15 days. It was thereafter through the impugned order dated 29.2.2016, the court of learned Additional Sessions Judge,

Bathinda passed the following orders:-

“- - - - As the appellant/accused has not appearing in this case, so it appears that she does not want to pursue with the present appeal. As such, the present appeal is hereby dismissed for non-prosecution. - - - -”

Thus, the short point which is involved in this revision is whether the learned appellate court was within its jurisdiction to have dismissed the appeal of the appellant in default of her appearance.

Section 386 of Code of Criminal Procedure (in short, Cr.P.C.) makes it abundantly clear that a court of Sessions must dispose off an appeal on merits. As is evident on perusal of the records and if the appellant and his counsel failed to appear, the appeal could not have been dismissed in default. The law is well laid down for which reliance is placed on **Bani Singh vs State of U.P., 1996(3) R.C.R. (Criminal) 201.**

Going through what is elicited from the impugned order, the appellant had been evading her appearance before the court, which has necessitated such an order. An inference that has been wrongly drawn by the court below. Thus the plain reading of this provision of section 386 Cr.P.C. makes it emphatically clear that the court is supposed to decide the appeal on merits. Accepting as has been detailed in the order, that the appellant was trying to evade her appearance, the best recourse available to the learned court below was to have appointed a counsel for the appellant from the Legal Aid at State expense and to have heard and decided. The Court besides this could have taken other coercive means for her

appearance, but by no means the court was supposed to dismiss her appeal in default. Thus by doing so, the court below has certainly fallen into an error which has caused immense prejudice and loss to the cause of the appellant. Without feeling the necessity of issuing notice to the respondent-complainant, this Court in exercise of its powers under section 401 Cr.P.C. in larger interest in these exceptional circumstances, set aside the impugned order dated 29.2.2016 thereby allowing the instant revision petition to that extent, thus, directing the learned Additional Sessions Judge, Bathinda to proceed ahead into the matter as per law.

Parties are directed to appear before the court below.

April 22, 2016
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(Fateh Deep Singh)
Judge

Whether referred to Reporter ? *No*