

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRR No.225 of 2016 (O&M)****Date of Decision: March 17, 2016**

Sanjeev Kumar

...Petitioner

VERSUS

M/s Amol Tractors Kurukshetra

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Kundu, Advocate
for the petitioner.

Mr.Arvind Bansal, Advocate
for the respondent.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Sanjeev Kumar against respondent M/s Amol Tractors Kurukshetra, challenging the order dated 13.01.2016 passed by learned Addl. Sessions Judge, Kaithal vide which the appeal filed by the petitioner was dismissed.

The brief facts of the case are that M/s Amol Tractors Kurukshetra filed a complaint against Sanjeev Kumar under Section 138 of the Negotiable Instruments Act on the ground that accused issued an account payee cheque bearing No.733522 dated 27.11.2007 amounting to ₹5 lacs, drawn upon State Bank of India.

The complainant presented the said cheque for encashment but it

was returned with the remarks 'account closed'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed.

Learned Chief Judicial Magistrate, Kaithal, vide judgment of conviction and order of sentence dated 22.12.2015, convicted and sentenced the petitioner to undergo rigorous imprisonment for a period of two years under Section 138 of the Negotiable Instruments act and to pay compensation of ₹10 lacs.

Aggrieved from the judgment of conviction and order of sentence dated 22.12.2015, the petitioner filed an appeal before learned Sessions Court. Learned Addl. Sessions Judge, Kaithal, vide impugned order dated 13.01.2016 dismissed the appeal by passing following order:-

“The appellant-convict has also filed an application for seeking suspension of the judgment dated 16.12.2015 and order of sentence dated 22.12.2015 passed by the Id. Trial court and has also sought the bail during pendency of the present appeal. Id. Proxy counsel states that the original counsel belongs to Karnal courts and has left the court complex at Kaithal and the appellant-convict is also not available. In such circumstances, the appeal and the application filed by the appellant-convict cannot be entertained as in absence of appellant-convict the appeal cannot be entertained. Even the Id. proxy counsel for appellant-convict could not show any provision under which the appeal can be entertained in absence of appellant-convict. Accordingly, the appeal stands dismissed. File be consigned to record room, after due compliance.”

Notice of motion was issued and learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have

gone through the record.

It is clear from the record that on the very first date, when the appeal came up for hearing before learned Addl. Sessions Judge, Kaithal, it was dismissed for non-appearance of convict as well as his counsel, though, as per the order proxy counsel was present on that day. It is settled law that rights of the parties should be determined on merits as far as possible. The Court should do substantial justice without going into the technicalities of law.

When learned counsel for the convict was not present on 13.01.2016 but proxy counsel was present, then the Court, in the interest of justice, instead of dismissing the appeal, should have adjourned the appeal to produce/awaiting appearance of appellant-convict or his counsel on the next date. The approach of learned Addl. Sessions Judge, Kaithal by passing the impugned order dated 13.01.2016 has caused miscarriage of justice.

In view of the above discussion, I find that the order dated 13.01.2016 passed by learned Addl. Sessions Judge, Kaithal, is not correct and not as per law and the same is set aside. The matter is remanded back to the lower Appellate Court/Sessions Court to decide the same on merits as per law. The parties are directed to appear before lower Appellate Court on 08.04.2016.

Finding merit in the present petition, the same is allowed, with the above-said directions.

March 17, 2016
Vgulati

(INDERJIT SINGH)
JUDGE