

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Appeal No.AS-57 of 2016

.....

Date of decision:8.4.2016

Suresh Kumar Bhati

...Appellant

v.

Teekam Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Ms. Deepa Jain, Advocate for Mr. Yashdev Kaushik, Advocate
for the appellant.

Mr. Jangvir S. Hooda, Advocate for the respondent.

.....

Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc.
No.A-1137-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 2.11.2013 passed by learned Judicial Magistrate Ist Class, Faridabad,
vide which the complaint filed by Suresh Kumar Bhati-complainant against
Teekam Singh-respondent/accused under Section 138 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 has been

acquitted of the allegations levelled against him.

It has been stated in the grounds of appeal that the impugned order dated 2.11.2013 passed by the learned Judicial Magistrate Ist Class, Faridabad is against law and facts on the record as such is liable to be set aside in view of the circumstances of the present case. The above said complaint came up for hearing before the learned Judicial Magistrate Ist Class, Faridabad, on 2.11.2013 and the same was dismissed for want of prosecution. It has been stated that on that day, unfortunately the mother of counsel for the complainant was seriously ill and the complainant was admitted in hospital on same day for treatment of acute viral fever and he was advised rest. A medical certificate dated 2.11.2013 issued by Dr. Hari Shankar Singh is appended. The learned Judicial Magistrate Ist Class, Faridabad has acted in a haste to decide the matter without application of mind.

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, Faridabad and on one date for the non-appearance of the counsel for the complainant and the complainant, this complaint filed under Section 138 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 could not appear before the Court due to the fact that mother of his counsel was seriously ill and the complainant was also admitted in hospital,

therefore, the absence was not intentional.

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 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 2.11.2013 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 3.5.2016.

April 8, 2016.

(Inderjit Singh)
Judge

hsp