

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-150 of 2017

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Date of decision:15.9.2017

Kuljit Singh

...Appellant

v.

Jasmail Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Suveer Sheokand, Advocate for the appellant.

Mr. Rahul Rampal, Advocate for the respondent.

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Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc. No.A-853-MA of 2014 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 17.1.2013 passed by learned Judicial Magistrate Ist Class, Ludhiana, vide which the complaint filed by Kuljit Singh against Jasmail Singh 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 notice of accusation against him.

It has been stated in the grounds of appeal that the judgment/order dated 17.1.2013 passed by the learned trial Court is based on surmises and conjectures. It has been mentioned that the complainant/appellant was pursuing his complaint regularly and sincerely, but he had no knowledge of the progress of the case after the respondent was declared proclaimed offender vide order dated 18.3.2011 and the file was consigned to record room. Thereafter, on bail application of the respondent the file was put up on 28.8.2012, but no notice was ever served upon the complainant/appellant. Due to non-serving of the notice, the complainant/appellant could not appear before the learned trial Court and the complaint was dismissed by the learned trial Court for want of prosecution vide order dated 17.1.2013. In other words, the proceedings from 28.8.2012 to 17.1.2013 were not into the knowledge of the complainant/appellant. It has been stated that the petitioner in the month of November 2013 came to know about the order when the respondent started saying in the locality that he has been acquitted in the criminal complaint filed by the complainant/appellant under Section 138 of the NI Act against him. Thereafter, the complainant/appellant enquired the entire matter and then all the facts came to his knowledge. After that he filed a criminal revision along with an application under Section 5 of the Limitation Act for condonation of delay, in which the delay was condoned and in view of the judgment of the Hon'ble High Court, the revision petition was withdrawn with liberty to file appeal before the High Court against the order dated 17.1.2013. Therefore, the impugned order dismissing the complaint is wrong, illegal and unsustainable. Hence,

the impugned order is liable to be quashed/set aside as he (complainant) has not received the notice issued by the Court after declaring the accused as proclaimed offender. 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.

The complaint was pending before the learned Judicial Magistrate Ist Class, Ludhiana, after the declaration of the accused as proclaimed offender, the complainant/appellant has not received any notice issued by the Court, he could not appear on the two dates and the 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 was appearing in this complaint case and his evidence was to be recorded as the accused was declared as proclaimed offender and file was consigned to record room. After the surrender of the accused, the complainant has not received any notice issued by the Court, therefore, his absence on these dates was not intentional. Neither the appellant-complainant nor his counsel could appear before the trial Court on 17.1.2013 due to the fact that the complainant has not received any notice. 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/appellant was appearing in this case regularly. The absence of the complainant on these dates 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, Ludhiana, 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.

Therefore, from the above, I find merit in this appeal and the same is allowed. The impugned order passed by the learned Judicial Magistrate Ist Class, Ludhiana, 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.

[5]

The parties are directed to appear before the trial Court on
12.10.2017.

September 15, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No