

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-2 of 2017

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Date of decision:20.1.2017

Pee Pee Marketing Dhilwan Chowk, Jalandhar

...Appellant

v.

Manmohan Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sanjeev Kumar Bawa, Advocate for the appellant.

Mr. Chandeev Singh, Advocate for the respondent.

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Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc. No.A-875-MA of 2015 granting leave to file appeal vide order passed by this Court today.

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 and have gone through the record.

This criminal appeal has been filed against the impugned order dated 3.4.2015 passed by learned Judicial Magistrate Ist Class, Jalandhar, vide which the complaint filed by complainant-Pee Pee Marketing 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 order dated 3.4.2015 passed by the learned trial Court is merely based upon the surmises and conjectures and has not at all even touched the legal proposition and it is contrary to the law and facts. It has been further stated that the trial Court has not properly appreciated the evidence and documents on the file and wrongly acquitted the accused. It has been submitted that learned counsel representing the appellant was not coming to the Court on account of fact that he was preparing for exams for judicial vacancies and authorized representative of the appellant to appear, who appeared before the Court and he was advised to come after lunch as no witness of the respondent was present at that time. However, when after lunch, the appellant appeared before the trial Court, it was transpired that case has already been dismissed in default and the order has already been signed. Thus, it is clear that the appellant was actively pursuing his case and appeared before the trial Court, but still his presence was not marked so his non-appearance was neither intentional nor willful, but was result of bona fide mistake. It has, therefore, been prayed that the impugned order of learned trial Court is liable to be set aside in the interest of justice.

The complaint was pending before the learned Judicial Magistrate Ist Class, Jalandhar, and an application for taking photographs of questioned and standard signatures of complainant had been moved, which was allowed with the directions to Handwriting Expert to take photographs

in the presence of both the parties or their counsel, but on that day learned counsel for the complainant was busy in preparation of his examination for Judicial Service, therefore, for one date for the non-appearance of the complainant or his counsel, 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 was appearing in this complaint case and his absence on one of the dates was not intentional. Neither the appellant-complainant nor his counsel could appear before the trial Court on 3.4.2015 due to the above fact. 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 its proprietor's absence from the proceedings. The complainant/appellant has given the ground in the appeal that the complainant and its 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 this case regularly. 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, Jalandhar, 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 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, 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 passed by the learned Judicial Magistrate Ist Class, Jalandhar, 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 8.2.2017.

January 20, 2017.

(Inderjit Singh)
Judge

hsp

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