

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-72 of 2017

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Date of decision:3.7.2017

Sant Raj

...Appellant

v.

Chandgi Ram

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Amit Jain, Advocate for the appellant.

Mr. Neeraj Sheoran, Advocate for Mr. Pawan Sharma,
Advocate for the respondent.

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Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc.
No.A-1479-MA of 2015 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 16.7.2015 passed by learned Judicial Magistrate Ist Class, Gurgaon,
vide which the complaint filed by Sant Raj against Chandgi Ram under
Sections 138/142 of the Negotiable Instruments Act, 1881 as amended upto
date (hereinafter referred to as 'the NI Act') has been dismissed in default

for want of prosecution.

It has been stated in the grounds of appeal that the order dated 16.7.2015 passed by the learned Judicial Magistrate Ist Class, Gurgaon is illegal, void, without jurisdiction and against principle of natural justice and as such the same is liable to be set aside, in the interest of justice, equity and fair play. It has been stated that the complaint filed by the complainant/appellant was at the stage of summoning of accused and on 16.7.2017, since the counsel for the appellant went to Sohna Court in some urgent case, he could not appear before the learned Court below well in time and the appellant could not come present due to his medical condition. Afterwards when the appellant inquired about the status of his case as well as next date of hearing, the appellant came to know that his case has been dismissed in default for want of prosecution since none has appeared. The appellant could not appear for the reason of his being suffering from acute pain in both legs and being unable to walk and even unable to perform his day to day obligations and was under treatment at Ektaa Hospital, Gurgaon from 15.7.2015 to 18.7.2015. It has been stated that the trial Court has erred in law and fact while dismissing the complaint in spite of the fact that same was fixed for summoning of the accused. Therefore, it has been prayed that the impugned order is liable to be quashed/set aside and 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, Gurgaon on 16.7.2015 for summoning the accused and on one date for the non-appearance of the complainant, this complaint filed under Sections 138/142 of the NI Act has been dismissed in default vide the impugned order.

The learned counsel for the appellant argued that the appellant was regularly 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 16.7.2015 due to the above stated facts. 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 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 dated 16.7.2015 passed by the learned Judicial Magistrate

Ist Class, Gurgaon, 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 passed by the learned Judicial Magistrate Ist Class, Gurgaon, dismissing the complaint in default 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 28.7.2017.

July 3, 2017.

(Inderjit Singh)
Judge

hsp

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