

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-74 of 2017

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Date of decision:10.7.2017

Sunil Kumar

...Appellant

v.

Ajay Gupta

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vipin Sharma, Advocate for Mr. S.M. Sharma, Advocate
for the appellant.

Mr. Gaurav Sethi, Advocate for the respondent.

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Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc.
No.A-261-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 7.7.2012 passed by learned Judicial Magistrate Ist Class, Ambala,
vide which the complaint filed by Sunil Kumar against Ajay Gupta under
Section 138 of the Negotiable Instruments Act, 1881, as amended by Act
No.66 of 1988, (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 on 26.10.2009, the learned trial Court passed the order declaring the respondent/accused proclaimed offender and the evidence of the complainant was also closed. On the surrender of the accused, he was granted bail and the notice was ordered to be issued to the complainant on various dates, however, he was not served for the dates fixed. The notices vide Court orders dated 23.3.2012, 7.4.2012, 7.5.2012 and 7.6.2012 were issued to the complainant, but in fact no notice was ever served upon the complainant or his counsel. Therefore, when the complainant came to know, he moved an application for restoration of the complaint, which was dismissed by the learned trial Court. It has been mentioned that the complainant is residing in Ambala and he is running the shop. Therefore, whatever report has come it was manipulated one with collusion. Therefore, the order dismissing the complaint and order dismissing the application for restoration are wrong, illegal and unsustainable. Therefore, 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 and the evidence of the complainant was also closed. 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, Ambala after the surrender of the accused and as the complainant has not received any notice issued by the Court, he could not appear on four 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 also closed and 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 7.7.2012 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 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, Ambala, 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, Ambala, 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 21.8.2017.

July 10, 2017.

(Inderjit Singh)
Judge

hsp

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