IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1463-MA-2016 (O&M)
Date of decision: - 10.8.2017

Nitin Dua **.....Appellant.**

versus

Priyanka Ritesh Marne **.....Respondent**

CORAM: - HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: - Mr. Sumit Gupta, Advocate for the appellant.

ARVIND SINGH SANGWAN, J. (ORAL)

CRM-A-1463-MA-2016

Leave to appeal is granted. Registry is directed to number as main appeal.

Main Appeal

Present appeal has been filed against the order dated 26.5.2016 passed by learned Judicial Magistrate Ist Class, Bahadurgarh, vide which the complaint filed by the appellant-complainant i.e. Criminal Case No. 140 under the Negotiable Instruments Act, 1881 (for short 'the Act) dated 23.3.2016, has been dismissed for non-prosecution.

Learned counsel for the appellant-complainant has submitted that after the preliminary evidence was concluded, trial Court vide order dated 5.4.2016 have summoned the respondent-accused for 26.5.2016. However, learned counsel for the appellant-complainant inadvertently noted the date as 28.5.2016 and informed the same date to the appellant-complainant.

Learned trial Court vide its order dated 26.5.2016, dismissed the complaint for non prosecution as the appellant-complainant or his counsel failed to appear on that date.

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Learned counsel for the appellant-complainant further submitted that even on that date though respondent-accused was summoned by trial Court yet there was no appearance on behalf of respondent-accused before the trial Court. He further submits that for a single default of the appellant-complainant, complaint has been dismissed and absence of the appellant-complainant was not intentional as the complainant was appearing on each and every date and has also led preliminary evidence in support of the complaint.

Learned counsel for the appellant-complainant, in support of his arguments, has referred to ***2015 (8) RCR (Criminal) 567, Sardar Singh vs. Gian Chand***; ***2016 (2) Law Herald 1420, Punjab State Industrial Development Corp. Ltd. vs. M/s Asia Spintex Ltd and others*** *and* ***2016 (3) RCR (Criminal) 624, Surender vs. Deshraj***, to submit that where a complaint has been dismissed, it amounts to discharge and that the impugned order has been passed in violation of the provisions of Section 256 Cr. P.C. It is further submitted that before passing the impugned order, trial Court has never issued notice to appellant-complainant and has straight away passed the order dismissing the complaint without affording any further opportunity. It is further submitted that since appellant-complainant has filed the complaint under Section 138 of the Act, trial Court should have passed an order to give a notice either to the appellant-complainant or to his counsel as per the provisions of Section 256 Cr. P.C. and, therefore, impugned order dated 26.5.2016 dismissing the complaint is illegal.

It may be noticed that in pursuance to the order of notice of motion dated 12.1.2017, no one has put in appearance on behalf of respondent-accused despite service and there is no opposition to the present petition.

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After hearing learned counsel for the appellant-complainant, present appeal is allowed. Impugned order dated 26.5.2016 is set aside and trial Court is directed to restore Criminal Case No. 140 dated 23.3.2016 and proceed further in accordance with law.

Appellant-complainant is directed to appear before the trial Court on 30.8.2017.

Disposed of with above direction.

(ARVIND SINGH SANGWAN)
JUDGE

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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No

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