

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM No. 37071 of 2016 in/and
CRM-A-2073-MA of 2016
Date of decision : 7.7.2017**

Prem Lal

.....Applicant

v.

Ved Parkash

.....Respondent

CORAM : HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present : Mr. Sandeep Arora, Advocate, for the applicant

Shekher Dhawan, J.

The present application has been filed under Section 378(4) Cr.P.C. for grant of special leave to appeal against the judgment of acquittal dated 22.7.2016, whereby complaint under Section 138 of N.I. Act was dismissed on account of non appearance. Along with this, an application for condonation of delay of 27 days in applying for leave to appeal has been filed. The impugned order dated 22.7.2016 is as under :-

“Present: None for the complainant

Accused on bail with counsel Sh. Lakhvir Singh,
Advocate

Case called in morning but none has come present on
behalf of the complainant. It is already 10.00 AM. Case be called
at 2.00 PM.

Navjit Pal Kaur
JMIC/22.7.2016”

“Present: None for the complainant

Accused on bail with counsel Sh. Lakhvir Singh,
Advocate

Case called at 2.00 PM but none has come present on behalf of the complainant. It is already 2.00 PM. Case be called at 3.30 PM.

Navjit Pal Kaur
JMIC/22.7.2016”

“Present: None for the complainant

Accused on bail with counsel Sh. Lakhvir Singh,
Advocate

Case called at 3.30 PM but none has come present on behalf of the complainant. It is already 3.30PM. Case be called at 4.00 PM.

Navjit Pal Kaur
JMIC/22.7.2016”

“Present: None for the complainant

Accused on bail with counsel Sh. Lakhvir Singh,
Advocate

Case called repeatedly after lunch but none has appeared on behalf of complainant. It is already 4.00 PM. Case called up again, but none appeared on behalf of complainant.

Xxxx xxxx xxxx xxxx xxxx

At this stage, presence of complainant is necessary to proceed with the case as case is pending for cross examination of CW1. But as the complainant has failed to appear for cross examination, therefore, the present complaint is dismissed under Section 256 Cr.P.C. and accused is acquitted. File be consigned to the record room.

Pronounced
22.7.2016”

Navjit Pal Kaur
JMIC/Jalandhar

Learned counsel for the applicant contended that no notice was ever received by the complainant issued for 10.6.2016 or 15.7.2016 and the order passed by the Court is liable to be set aside and leave to file the appeal be granted.

Having considered the submissions made by learned counsel for the applicant and perusal of the record reveals that as per order dated 6.5.2016 the complainant was to appear in the Court on 10.6.2016 and relevant order is extracted here under :-

“Present : Complainant with counsel Sh. SK Kapoor, Advocate
Accused on bail with counsel Sh. Lakhvir Singh, Advocate
However, counsel for the parties have stated that there are chances of compromise between the parties and requested that the matter be referred to the Mediation Centre. So, case is referred to the Mediation Centre. Ahlmad is directed to send the concerned papers complete in all respect to the Mediation Centre for 12.5.2016 and parties are directed to appear in Mediation Centre at 10.00 AM sharp.”

As per subsequent proceedings on 10.6.2016, the applicant/complainant failed to put in appearance before the Court and the Court passed the following order :-

“Present : None for complainant
Accused on bail with counsel Sh. Lakhvir Singh
No CW is present. Case called repeatedly since morning but none has appeared on behalf of the complainant. Now to come up on 15.7.2016 for cross examination of CW1 and for awaiting appearance of complainant.

Sd/-
(Navjit Pal Kaur)
JMIC/Jalandhar
10.6.2016”

Thereafter, there was again no appearance from the complainant's side and the Court passed the following order on 15.7.2016 :-

“Present : None for complainant
Accused on bail with counsel Sh. Lakhvir Singh
No CW is present. Presence of the complainant is necessary to proceed further with the case. In the interest of justice complainant be awaited for 22.7.2016 as last opportunity, failing which

the case will be proceeded u/S 256 of Cr.P.C.

Sd/-
(Navjit Pal Kaur)
JMIC/Jalandhar
15.7.2016”

Again on 22.7.2016 no one has put in appearance on behalf of the complainant and the Court below has passed the impugned order.

In view of above, there is absolutely no ground for setting aside the impugned order. Otherwise also, no plausible explanation has been furnished for causing delay of 27 days in applying for leave to appeal.

Resultantly, both the applications i.e. for condonation of delay in filing the appeal and application for special leave to appeal stands dismissed.

(SHEKHER DHAWAN)
JUDGE

7.7.2017
Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No