

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.A-1010-MA of 2015 (O&M)

Date of Decision: 12.10.2017

Karambir

...Applicant (s)

Versus

Mahavir Parshad

...Respondent (s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Sumit Sangwan, Advocate
for the applicant.

HARI PAL VERMA, J. (Oral)

This is an application filed under Section 378(4) CrPC for grant of special leave to appeal against order dated 15.04.2015 passed by learned Judicial Magistrate Ist Class, Gurgaon (now Gurugram), whereby the complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 read with Section 420 IPC has been dismissed in default for want of prosecution.

On notice of motion having been issued, it has been reported that the notice was duly served upon the respondent, however, no one has put in appearance on his behalf.

I have heard learned counsel for the applicant and perused

the impugned order with due care and circumspection.

For the reasons stated in the application, the same is allowed.

Leave to appeal granted.

Office is directed to assign appeal number to the case.

Learned counsel for the appellant submits that the appellant has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 read with Section 420 IPC against the respondent-accused, with the allegations that the respondent-accused had taken a friendly loan of Rs.5 lacs from the appellant on 9.10.2012 and in discharge of his liability, he had issued a cheque No.670940 dated 05.01.2013 for an amount of Rs.5 lacs drawn on Oriental Bank of Commerce, Mata Sheetla Devi Temple, Sector 5, Gurgaon in favour of the appellant-complainant. However, on presentation of the said cheque with the bank, the cheque was bounced on account of "Funds Insufficient". Resultantly, the present complaint was filed against the respondent-accused.

Learned counsel for the appellant contends that the complaint in question was listed before the trial Court on as many as on 24 occasions and the applicant was duly represented on 23 occasions. However, it is only on 15.04.2015, neither the appellant nor his counsel could appear, which led to dismissal of the complaint for want of prosecution. He submits that non-appearance of the applicant before the trial Court was not intentional. Since wife of the appellant suddenly fell ill on 14.04.2015 and was admitted in Max Super

Specialty Hospital, New Delhi, from where she was discharged on 18.04.2015. Therefore, the petitioner could not pursue his case on 15.04.2015. He further submits that the complainant has been examined in the case and during the course of his examination, a compromise was also arrived at between the parties and while acting on this compromise, the respondent-accused had started paying the instalments of the loans, but full amount has not yet been paid. The trial Court has dismissed the complaint in question on technicalities without appreciating the facts and circumstances of the case, especially when the appellant-complainant was otherwise appearing in the case regularly. At the most, the best course available for the trial Court was to adjourn the case.

Though learned trial Court has rightly dismissed the complaint on account of non-appearance of the complainant-appellant, but while considering the fact that the complainant-appellant had been appearing in the case regularly and on the relevant date, he had to attend his ailing wife who was admitted in hospital, this Court finds that the complainant-appellant deserves another opportunity to pursue his complaint, which was otherwise not adjudicated on merits. Reference may be made to a judgment of Himachal Pradesh High Court in the case of **M/s Bhagra Steels Sales Pvt. Ltd. Vs. Sunil Mohan 2010(2) Him LR 913**, wherein it was held that when presence of the complainant, on the relevant date, was not necessary, the complaint should not have been dismissed in default. Moreover,

proceedings under Section 138 of the Act are more or less civil in nature, even though the same may have criminal bearing.

Since no one has put in appearance to oppose this appeal, the arguments put forward by learned counsel for the appellant remain uncontroverted. Accordingly, the present appeal is allowed and order dated 15.04.2015 passed by Judicial Magistrate Ist Class, Gurgaon is set aside. Consequently, the complaint filed by the applicant under Section 138 of the Act is restored for its decision on merits. The trial Court is directed to proceed with the matter from the stage when it was dismissed.

Appellant is directed to appear before the Judicial Magistrate Ist Class, Gurgaon on 13.11.2017.

October 12, 2017
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No