

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

**CRM-A No.1741-MA of 2017 (O&M)
Date of decision: December 08, 2017**

State of Haryana

....Appellant

Versus

Raju Ram and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J.(ORAL)

CRM No.24894 of 2017

In view of the averments made in the application, which is duly supported by an affidavit, delay of 186 days in filing the appeal is condoned.

The application stands disposed of accordingly.

CRM-A No.1741-MA of 2017

Learned counsel for the State submits that a wrong provision has been mentioned in the appeal and as the impugned order has been passed under Section 350 Cr.P.C., the appellant has a right to file appeal under Section 351 Cr.P.C.

Section 351 Cr.P.C. read as under:-

“351. Appeals from convictions under sections 344, 345, 349 and 350.--*(1) Any person sentenced by any Court other than a High Court under section 344, section 345, section 349 or section 350 may, notwithstanding anything contained in this Code appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.*

(2) The provisions of Chapter XXIX shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce

or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of small causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by any Registrar of Sub-Registrar deemed to be a civil Court by virtue of a direction issued under section 347 shall lie to the Court of Session for the sessions division within which the office of such Registrar of Sub-Registrar is situate.”

Accordingly the present application which is otherwise filed under Section 378 (3) is being dealt with under the specific provisions of Section 351 Cr.P.C.

Challenge in the present application is to the order dated 31.08.2016 passed by learned Additional Sessions Judge, Rohtak whereby on account of non-appearance of PW ASP Himanshu Garg as witness, a fine of Rs.100/- has been imposed.

Learned State counsel has argued that non-appearance on the part of the concerned PW on relevant dates is not intentional. On instructions from PW Himanshu Garg, who is present in person, learned counsel states that on 26.07.2016, this witness could not appear before the trial Court as on the given date, he was attached with Police Headquarter, Panchkula whereas on 16.08.2016, he was unwell and in this manner the non-appearance on the part of this witness was beyond his reach. Imposition and payment of fine of Rs.100/- as imposed by the trial Court will adversely affect his service career, though there was no intention on the part of the concerned witness to avoid appearance.

Pursuant to order dated 14.11.2017 whereby PW Himanshu Garg was directed to come present, is present. He states that it was never

his intention to avoid appearance in Court. The imposition of fine will adversely affect his service record. On 31.08.2016 when the impugned order was passed, this witness was present in Court.

Efforts were made to serve the respondents in this case but it has been reiterated that he is not residing at the given address. So far as service of respondent No.2 is concerned, no such village named Chamaria exists in District Jalaur.

I have heard learned State counsel and find that even if the present petition is decided in the absence of the respondents, no prejudice is going to be caused to them, as the appellant is not seeking any relief against the respondents.

The submission made by learned State counsel seems genuine. On 31.08.2016 the said witness had appeared before the trial Court and in this manner he was available to be examined. The bona fide of this witness can be noticed from the fact that on the same date he has deposited the fine also.

Therefore, taking into consideration the totality of the facts and circumstances of the case and considering the fact that there was no *mala fide* on the part of this witness to non-appearance from Court, appeal is accepted and order dated 31.08.2016 is set aside. The fine imposed and deposited by the said witness shall be refunded to him.

December 08, 2017

m. sharma

**(HARI PAL VERMA)
JUDGE**

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