

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-113 of 2018

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Date of decision:23.10.2018

Satish Kumar

...Appellant

v.

M/s M. Tech Developers Ltd. and another

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rohit Rana, Advocate for Mr. Kunal Dawar, Advocate for the appellant.

Mr. Adish Gupta, Advocate for the respondents.

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Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc. No.A-1587-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 18.7.2014 passed by learned Judicial Magistrate Ist Class, Faridabad, vide which the complaint filed by Satish Kumar against M/s M. Tech Developers Ltd. and Mr. Mahender Sharma under Section 138 read with Sections 141 and 142 of the Negotiable Instruments Act, 1881 and under

Section 420 IPC has been dismissed for want of prosecution.

It has been stated in the grounds of appeal that on 18.07.2014, the case was fixed for prosecution evidence, on which date initially in the morning the counsel for the complainant appeared, but thereafter strike was declared by the local Bar Association, as a result thereof neither the complainant, who himself is a lawyer, could appear nor his counsel was allowed to appear by the Local Bar Officers and due to this reason, the complaint was dismissed in default. The appellant would not have, in any manner, benefitted from not appearing before the learned trial Court on the date fixed as the same would have resulted in immense loss to him. Therefore, the impugned order is liable to be quashed/set aside as he (complainant) could not appear due to the above reason. 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, Faridabad for evidence of complainant. Neither the complainant nor his counsel could appear as the District Bar Jhajjar declared strike and his counsel was not allowed to appear and the complaint filed under Section 138 read with Sections 141 and 142 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. Neither the appellant-complainant nor

his counsel could appear before the trial Court on 18.7.2014 due to the above fact. 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 one date 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, Faridabad, 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

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same is allowed. The impugned order passed by the learned Judicial Magistrate Ist Class, Faridabad, 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 19.11.2018.

October 23, 2018.

(Inderjit Singh)
Judge

hsp

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