

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-134 of 2018

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Date of decision:12.11.2018

Subhash Khurana

...Appellant

v.

Shiv Kumar Bansal

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Parminder Singh, Advocate for the appellant.

Mr. Sumit Gupta, Advocate for the respondent.

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Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc. No.A-641-MA of 2015 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 challenging the impugned order dated 28.1.2014 passed by learned Judicial Magistrate Ist Class, Karnal, vide which the complaint filed by Subhash Khurana against Shiv Kumar Bansal under Section 138 of the Negotiable Instruments Act, 1881, (hereinafter referred to as 'the NI Act') has been dismissed in default for non-appearance of the complainant.

It has been stated in the grounds of appeal that the learned trial Court while passing the order dated 28.1.2014 had grossly erred in law as well as facts in dismissing the complaint for non-prosecution and acquitting the accused for the offence under Section 138 of the NI Act. It has been submitted that the complainant had been appearing before the learned trial Court mostly on each and every date of hearing. The complaint was fixed on 28.1.2014 for after-charge evidence of the complainant. It has been stated that vide order dated 8.10.2013, while no CW was present and the date was requested, the case was adjourned for 28.1.2014, but the same was wrongly noted down as 28.2.2014 by the appellant through his counsel. When the appellant upon noting down date as 28.2.2014 himself want to record his own evidence, it was then transpired that the complaint has already been dismissed in default vide order dated 28.1.2014. As the appellant and his counsel could not appear on 28.1.2014 due to wrong noting of date, hence the complaint was dismissed in default. Therefore, the impugned order is liable to be quashed/set aside as he (complainant) could not attend the Court due to the above fact on that day. 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, Karnal for after-charge evidence of the complainant and on one date for the non-appearance of the complainant, this complaint

filed under Section 138 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 and his absence on one of the dates was not intentional. Neither the appellant-complainant nor his counsel could appear before the trial Court on 28.1.2014 due to the fact that his counsel noted wrong date. 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, Karnal, 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

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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 same is allowed. The impugned order passed by the learned Judicial Magistrate Ist Class, Karnal, 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 3.12.2018.

November 12, 2018.

(Inderjit Singh)
Judge

hsp

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