

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-154 of 2018

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Date of decision:28.11.2018

Raj Kumar

...Appellant

v.

Ashwani Kumar and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Ms. Sukhpreet Kaur, Advocate for the appellant.

Mr. Tarun Sharma, Advocate for Mr. R.S. Bajaj, Advocate for respondent No.1.

Ms. Monika Jalota, Deputy Advocate General, Punjab for the respondent No.2-State.

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Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc. No.A-439-MA of 2017 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 4.3.2015 passed by learned Judicial Magistrate Ist Class, Jalandhar, vide which the complaint filed by Raj Kumar against Ashwani Kumar under

Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') has been dismissed in default and the accused stands acquitted.

It has been stated in the grounds of appeal that the complainant/appellant was pursuing the above said case very carefully, however, in March 2014, a false case FIR No.29 dated 29.3.2014 under Sections 420, 465, 467, 468, 471 and 120-B IPC and Section 12 of Passport Act was registered at Police Station Sadar Nawanshahr against the appellant, in which, he was arrested on 17.4.2014 and thereafter other criminal cases were also registered against the applicant. Later on, the applicant was released on bail on 7.10.2015 by the learned Court below. After getting released on bail in the cases on 7.10.2015, the appellant contacted his counsel in the above said complaint case and he was informed by the Clerk of the counsel that accused-Ashwani Kumar has been declared as proclaimed offender in the complaint case and hence, when the accused will be arrested in the above said case, only then, the trial will proceed further and the appellant will be informed accordingly and he need not to come to the Court. It has been mentioned that it was later on in January 2017, the appellant saw the accused openly roaming in the market and thereafter on enquiring from the concerned Court, the applicant came to know about the status of the case that the complaint under Section 138 of the NI Act filed by him was ordered to be dismissed in default on 4.3.2015 and the accused stands acquitted in the above said case. Hence, under the given facts and circumstances, the applicant could not appear before the learned trial Court

to pursue the complaint case. Therefore, the impugned order is liable to be quashed/set aside as he (complainant) could not pursue his case due to the facts stated above. 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 No.1 as well as learned State counsel have put in appearance and contested this appeal.

The complaint was pending before the learned Judicial Magistrate Ist Class, Jalandhar, but no one put in appearance before the Court on 4.3.2015 and it has been mentioned in the order that no one is appearing before the Court below on behalf of the complainant since 26.11.2014, hence the same was dismissed in default.

The learned counsel for the appellant argued that the appellant could not appear before the trial Court due to the fact that he was arrested in a false case and his counsel has not given him the correct status of the case. After the surrender of the accused, the complainant has not received any notice issued by the Court, therefore, his absence on this date was not intentional. Neither the appellant-complainant nor his counsel could appear before the trial Court on 4.3.2015 due to the fact that the complainant has not received any notice, as he was arrested in a false case. 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 this 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, Jalandhar, 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 same is allowed. The impugned order passed by the learned Judicial Magistrate Ist Class, Jalandhar, 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
7.1.2019.

November 28, 2018.

(Inderjit Singh)
Judge

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