IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-21-MA-2017 in/and
CRA-AS-92-2018 (O&M)
Date of Decision:-01.10.2018.

M/s Metro Filling Station

.....Applicant

Versus

M/s SIFC Logistics Pvt. Ltd.

......Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

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Present: Mr. Balram Prashar, Advocate for
Mr. J.S. Ghumman, Advocate for the appellant.

Mr. Sanjay Kumar, Advocate for the respondent.

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P.B. BAJANTHRI, J. (Oral)

In the present application, appellant has prayed for the following relief:-

> *"Application u/s 378(4) of Cr.P.C., praying for special leave to appeal against the order of acquittal, under the given facts and circumstances of the case."*

With the consent of the parties, special leave to appeal is granted to the applicant/appellant. With the consent of the parties, main matter is taken on board today itself.

2.) In the instant appeal, applicant have sought for setting aside the order dated 21.11.2016 whereby the complaint filed by the appellant was dismissed for non-prosecution which resulted in the acquittal of the respondent and prayed for the restoration of the complaint at its original number.

3.) Perusal of the order dated 21.11.2016, it is evident that on 21.11.2016 JMIC Court while taking up the matter called the case on several times and on the very same day proceeded to pass order for dismissed in default for want of prosecution.

4.) Learned counsel for the appellant submitted that counsel who had appeared before JMIC had noted in his diary a wrong date of hearing. Perusal of the JMIC order dated 21.11.2016, it is evident that complainant or his counsel should have been given an opportunity if there is no representation on 21.11.2016, even if the matter is called several times. For the lapse on the part of counsel, complainant cannot be penalised. So, the Court was required to give one more accommodation to him. Passing order of dismissal for non-prosecution resulted into the acquittal of the accused respondent. Hon'ble the Supreme Court in case of Aseem Shabanli Merchant Vs. Brij Mehra and another reported in (2005) 11 SCC 412 held that such order deserved to be recalled so that complaints could be tried on merits. No doubt, in the matter like Section 138 of the Negotiable Instruments Act proceedings, case is required to be decided within a reasonable period of six months as held by the Supreme Court in the case of ***Meters and Instruments Private Ltd. and another Vs. Kanchan Mehta*** reported in ***AIR 2017 SC 4594*** but it does not means to deny the opportunity of proper hearing to the parties. So, the order passed by the JMIC is not reasonable one. Nor the counsel for the respondent could apprise any ground to uphold the order. Having regard to the fact that petition has been dismissed for non-prosecution JMIC order dated

21.11.2016 is set aside. Parties are hereby directed to appear before the JMIC Court on 16.11.2018. JMIC Court is requested to decide the matter within a reasonable period of six months from the date of receipt of certified copy of this order. Respondent is entitled to cost of litigation a sum of Rs.10,000/-. Cost shall be paid within a period of one month from today.

5.) Appeal stands allowed.

(P.B. BAJANTHRI)
JUDGE

October 01, 2018.
sandeep

Whether speaking/reasoned:- Yes / No

Whether Reportable:- Yes / No.