

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-A-1595-MA-2014
Date of Decision: 10.09.2018

DHARAM SINGH GODARA

...Appellant

Versus

JASBIR KUMAR

...Respondent

CORAM:- HON'BLE MR. JUSTICE SUDHIR MITTAL.

Present:- Mr. Ram Bilas Gupta, Advocate,
for the appellant.

Mr. Satish Mishra, Advocate for the respondent.

SUDHIR MITTAL, J. (Oral)

Vide order dated 12.11.2013, the complaint of the petitioner under Section 138 of Negotiable Instruments Act, 1881, was dismissed on account of non filing of copy of the complaint. Hence, the present appeal against acquittal.

Learned counsel for the appellant refers to zimni order dated 27.02.2013, wherein the trial Court has recorded that a copy of the complaint had been filed. Thus, it is submitted that the impugned order is factually incorrect.

The zimni order dated 27.02.2013, records filing of copy of complaint for the notice issued for 30.04.2013. Learned counsel for the appellant has then read zimni order dated 30.04.2013 wherein it is recorded that notice issued to the respondent had not been received back served or otherwise. Thus, it cannot be said that the impugned order is factually

incorrect. There is no subsequent order wherein deposit of copy of the complaint finds mentioned, and therefore, the argument of learned counsel for the appellant deserves to be rejected.

It is next contended that the appellant is the complainant. A cheque of Rs.10 lacs has been dishonored. By delaying decision of the complaint, the appellant would not get any benefit. Non filing of copy of the complaint appears to be a mistake on the part of the counsel for which the appellant should not be made to suffer.

Learned counsel for the respondent submits that initially, the appellant approached the Court of Sessions by way of revision petition. The said petition was dismissed as being not maintainable and thereafter the present appeal has been filed. The same is time barred and deserves to be rejected. Further, the appellant is guilty of not filing a copy of the complaint on a number of dates and thus, the trial Court had no option but to dismiss the complaint. There is no error in the impugned order and the appeal does not deserve to be allowed.

Having considered the rival submissions of the parties, I am of the view that the interests of justice would be better served in case the impugned order is set aside and the matter is remanded to the trial Court for a fresh decision in accordance with law on merits. The appellant being the complainant would draw no benefit by delaying the proceedings by not filing a copy of the complaint. It appears to be an error on the part of his counsel before the trial Court. Submission of learned counsel for the respondent is that the appeal is time barred, but perusal of the file shows that delay was condoned while issuing notice and thus, this argument cannot be accepted.

For the aforementioned reasons, the appeal is allowed. The impugned order dated 12.11.2013 is set aside and the matter is remitted to the trial Court for decision of complaint case No. 6775 of 01.09.2010 afresh on merits in accordance with law. Parties shall appear before the trial Court on 25.09.2018 at 10 AM. Issuance of process shall be dispensed with by the trial Court as the respondent is represented by his counsel before this Court and the trial Court shall proceed further with the case from the stage of serving notice of accusation upon the respondent/accused.

(SUDHIR MITTAL)
JUDGE

September 10, 2018
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No