

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Appeal No.AS-974 of 2018

.....

Date of decision:14.12.2018

Baljinder Singh

...Appellant

v.

Maninder Pal Singh and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Swarn Sandhir, Advocate for the appellant.

Mr. Manjit Singh Uppal, Advocate for respondent No.1.

Mr. N.K. Banka, Deputy Advocate General, Punjab for
respondent No.2-State.

.....

Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc.
No.A-2048-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 against the impugned order
dated 12.11.2014 passed by learned Judicial Magistrate Ist Class, Patiala,
vide which the complaint filed by Baljinder Singh against Maninder Pal
Singh under Section 138 of the Negotiable Instruments Act, 1881,

(hereinafter referred to as 'the NI Act') and Section 420 IPC has been dismissed in default for want of prosecution and the accused has been acquitted from the allegations levelled against him.

It has been stated in the grounds of appeal that on 12.11.2014, the appellant and his counsel were present before the learned trial Court in the morning session but the learned Court was busy in some other cases and it was asked to the counsel for the appellant to come present after lunch hours. But, when at about 1.30 p.m., the appellant along with his counsel appeared before the learned trial Court, it came to their knowledge that the complaint has been dismissed in default due to non-appearance. The non-appearance of the appellant has occurred in the above mentioned circumstances. It was neither wilful nor intentional. The case was fixed for the cross-examination of the appellant. Therefore, the order dismissing the complaint and acquittal of the accused is illegal and perverse and has caused grave miscarriage of justice. 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 and learned State counsel have appeared and contested this appeal.

The complaint was pending before the learned Judicial Magistrate Ist Class, Patiala for cross-examination of the appellant. The complainant and his counsel could not appear before the Court as stated above and the complaint filed under Section 138 of the NI Act and Section

420 IPC 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 the case was fixed for cross-examination of the complainant. The complainant and his counsel appeared before the Court on 12.11.2014 in the morning session but the learned Court was busy in some other cases and it was asked to the counsel for the appellant to come present after lunch hours. 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, Patiala, has caused miscarriage of justice. If this order is not set aside, the

[4]

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, Patiala, 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 23.1.2019.

December 14, 2018.

(Inderjit Singh)
Judge

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