

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-57 of 2018

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Date of decision:20.03.2019

Paramjit Singh

...Appellant

v.

Jaspreet Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vishnu Dutt, Advocate for Mr. Naveen Bawa, Advocate for the appellant.

Mr. Karamjit Bawa, Advocate for the respondent.

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Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc. No.A-1420-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 3.5.2017 passed by learned Judicial Magistrate Ist Class, Ludhiana, vide which the complaint filed by Paramjit Singh against Jaspreet Singh under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') has been dismissed in default and the accused

has been acquitted.

It has been stated in the grounds of appeal that on 8.3.2017 the complaint was adjourned to 5.4.2017 for further cross-examination of CW, but inadvertently wrong date i.e. 5.5.2017 was noted down by the counsel for the appellant, which was neither intentional nor deliberate. When on 5.5.2017, the counsel for the appellant went to the Court, he came to know that the case was adjourned to 5.4.2017 and not for 5.5.2017 and on 5.4.2017 the case was further adjourned to 3.5.2017 and on 3.5.2017 the complaint was dismissed in default and the respondent-accused has been acquitted. It has been stated that the appellant was pursuing the said case from the very first date and the respondent was seeking adjournments to compromise the matter. Even the respondent was obtaining the dates for making the payment to the appellant. There was no absence of the appellant or his counsel on the earlier dates given to both the parties by the learned trial Court. The absence of the appellant or his counsel on 3.5.2017 was neither intentional nor deliberate. In fact, inadvertently wrong date was noted down by the counsel for the appellant. Therefore, the impugned order is liable to be quashed/set aside as he (complainant) could not appear due to the above facts. 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, Ludhiana for cross-examination of the CW, but he could not appear on 3.5.2017 and the 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 the case was fixed for further cross-examination of the CW. Due to wrong noting of date, the complainant or his counsel could not appear before the Court on 3.5.2017, therefore, his absence on this date was not intentional. 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, Ludhiana, has caused miscarriage of justice. If this order is not set aside, the complainant/appellant will suffer irreparable loss. It is settled law that

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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, Ludhiana, 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 9.4.2019.

March 20, 2019.

(Inderjit Singh)
Judge

hsp

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