

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-62 of 2018

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Date of decision:03.04.2019

Shivinder Singh

...Appellant

v.

Buta Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. G.S. Sandhu, Advocate for the appellant.

Mr. Anantdeep Singh Sandhu, Advocate for the respondent.

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Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc. No.A-839-MA of 2016 granting leave to file appeal vide order dated 9.8.2018 passed by this Court.

Notice of motion was issued to the respondent.

Mr. Anantdeep Singh Sandhu, learned Advocate has appeared on behalf of the respondent and contested this appeal.

I have heard learned counsel for the parties in the appeal and have gone through the record.

This criminal appeal has been filed against the impugned order dated 1.10.2015 passed by learned Judicial Magistrate Ist Class, Moga, vide which the complaint filed by Shivinder Singh against Buta Singh under

Section 138 read with Section 142 of the Negotiable Instruments Act, 1881, (hereinafter referred to as 'the NI Act') has been dismissed in default and the accused has been acquitted of the charges as framed against him.

It has been stated in the grounds of appeal that on 1.10.2015, the appellant could not appear before the trial Court as his counsel had wrongly noted the date as 21.10.2015 instead of 1.10.2015. It has been mentioned that on 24.9.2015, an application for exemption from personal appearance of the complainant was filed and the same was allowed and so, the complainant was not aware about the date and had enquired from the counsel, who inadvertently noted wrong date. It has been mentioned that the findings of the learned trial Court are based on surmises and conjectures and being unsustainable in the eyes of law and are liable to be set aside and the order dismissing the complaint is liable to be quashed/set aside. It has been further prayed that the complaint of the appellant may be restored to its original number, in the interest of justice.

The complaint was pending before the learned Judicial Magistrate Ist Class, Moga, for evidence of the complainant. The complainant/appellant and his counsel could not appear before the trial Court on that day due to the above mentioned facts and the complaint filed under Section 138 read with Section 142 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 the evidence of the complainant. As the personal appearance of the complainant was exempted and his counsel had noted wrong date, therefore, his absence on

[3]

that date was not intentional. Neither the appellant-complainant nor his counsel could appear before the trial Court on 1.10.2015 due to the fact that his counsel has noted wrong date. 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, Moga, 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.

[4]

Therefore, from the above, I find merit in this appeal and the same is allowed subject to payment of costs of ₹5,000/- to be deposited with District Legal Services Authority, Moga. The impugned order passed by the learned Judicial Magistrate Ist Class, Moga, 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 22.04.2019.

April 03, 2019.

(Inderjit Singh)
Judge

hsp

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