

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CRM-M-12817-2018 (O & M)
Date of Decision:20.08.2019

Rahisuddin

...Petitioner

Versus

Anshul Garg

...Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Akshay Bansal, Advocate for
Mr. Johan Kumar, Advocate for the petitioner.

MANOJ BAJAJ, J.

Rahisuddin - petitioner has filed this petition under Section 482 Cr.P.C. for setting aside the order dated 30.01.2018 (Annexure P-4) passed by the learned Additional Sessions Judge, Faridabad whereby the appeal against judgment of conviction dated 13.12.2016 and order of sentence dated 15.12.2016 was dismissed for non-prosecution.

The facts in brief, leading to the petition are as under:-

Respondent-Anshul Garg brought the criminal complaint under Section 138 of Negotiable Instruments Act, 1881 against the petitioner (convict), wherein it was alleged that the complainant being a reputed dealer/distributor of Sanitary and Hardware Products and he was carrying out business in the name and style of M/s Shri Sanitary Hardware Store. Accused is running his proprietorship concern in the name and style of M/s R.K. Enterprises. Accused had purchased PVC pipes and elbow (PVC) solution, elbow from the complainant through various invoice No. 5756

dated 11.7.2014 for an amount of ₹31,028/-, invoice No.5766 dated

14.7.2014 for an amount of ₹4,565/- and invoice No.5840 dated 22.8.2014 for an amount of ₹35,843/-. The goods were supplied to the accused as per above said invoices and accused in part discharge of his legally enforceable liability/debt against him had issued cheques bearing No. 043859 dated 15.7.2014 for an amount of ₹31,028/-, cheque bearing No.043864 dated 16.7.2014 for an amount of ₹4,565/-and cheque bearing No.043866 dated 24.8.2014 for an amount of ₹35,843/- drawn on Axis Bank Ltd, Palwal in favour of the complainant, which got dishonoured on its presentation with remarks 'Account blocked and Funds Insufficient' vide bank memos dated 30.8.2014 and 18.7.2014.

After conclusion of trial, the trial Court vide its judgment dated 13.12.2016 held the accused guilty of the offence punishable under Section 138 of Negotiable Instruments Act, 1881. On 15.12.2016, the order of sentence was passed thereby imposing sentence of simple imprisonment for a period of six months, besides awarding a compensation of ₹1,07,000/-.

Aggrieved against this, appeal was filed. However, the same was dismissed for non-prosecution vide order dated 30.01.2018 as neither the counsel for the appellant nor the appellant had appeared on the said date.

Notice in the present petition was issued on 27.03.2018, however, despite service, no one has put in appearance on behalf of the respondent.

Learned counsel for the petitioner contends that the order passed by the trial Court is harsh as it has proceeded to maintain the conviction without examining the merits of the appeal. It is contended that in case the order is set aside and the appeal is decided on merits, no

prejudice would be caused to the complainant.

After hearing learned counsel for the petitioner, this Court finds that the appellant and his counsel have been regularly attending hearing before the Appellate Court, which is evident from the zimni orders reproduced in the petition. It was only on 30.01.2018 when neither the counsel for the appellant nor appellant had appeared, the Appellate Court proceeded to dismiss the appeal for want of prosecution.

Learned counsel for the petitioner has relied upon the judgment of this Court passed in CRR-3535-2018 titled as 'Subhash Chand Maheshwari vs. Raju Solanki' decided on 11.02.2019 wherein the importance of first appeal against the conviction is noticed and similar order of dismissal on appeal for non-prosecution was set aside. Reference can be made to the following observations:-

“The principles of natural justice, which is the soul of our criminal jurisprudence is violated whenever the Appellate Court refuses to decide the appeal without examining the merits or hearing the appellant or his pleader. This rule is well embedded not only during the course of the trial proceedings, but has equal importance at the appellate stage also. Of course, the trial proceedings may carry more procedural aspects, but an appeal against conviction is founded on substance, whereupon the judgment of trial Court is based, therefore, the Appellate Court is not supposed to pay much importance to the procedural aspect, over and

above the material substance, otherwise, the purpose of appeal would stand defeated. The important features of natural justice are well recognized in our criminal jurisprudence which include the recordings of reasons as necessity of a fair decision. Therefore, it is always desirable to deliver reasons for arriving at a conclusion after examining the merits of the appeal.

Examining this aspect from another angle, it is clear that depriving a convict from his solitary right of appeal as provided by the statute would certainly curtail his right to life and liberty which is guaranteed by Article 21 of the Constitution of India. No person can be deprived of his personal liberty except according to procedure established by law. The right of appeal is not just a formality but is an effective remedy in law given to the aggrieved person to knock the doors of the Appellate Court to seek justice. In a given situation, the Court is well within its jurisdiction to seek assistance from the legal aid establishments by the State Government or may appoint a counsel to represent the convict for rendering assistance.”

Though the said order is revisable, however, considering the nature of the relief sought for in that petition, the present petition under Section 482 Cr.P.C. is equally maintainable.

In view of the above discussion, impugned order dated

30.01.2018 is set aside and the appeal is restored to its original number. It is further made clear that the appellant be allowed to remain on the same bail bonds and surety bonds furnished at the time of suspension of sentence by the Appellate Court and in case the earlier bonds have been discharged, the appellant be allowed to furnish the fresh bonds.

Petition is allowed.

20.08.2019

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(MANOJ BAJAJ)
JUDGE

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No