

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-79 of 2019

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Date of decision:27.02.2019

Dinesh Sood

...Appellant

v.

Bhupinder Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. S.K. Yadav, Advocate for the appellant.

Mr. Ravinder Singh, Advocate for the respondent.

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Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc. No.A-2012-MA of 2016 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 06.08.2016 passed by learned Judicial Magistrate Ist Class, Ambala, vide which the complaint filed by Dinesh Sood against Bhupinder Singh under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') has been dismissed in default for want of prosecution.

It has been stated in the grounds of appeal that on 3.9.2016, when the appellant appeared before the learned trial Court, he came to know that his case was not listed. Then he moved an application for tracing the file and marking his presence, on which the Ahlmad of the Court reported that the case has already been decided on 6.8.2016 and the learned trial Court has dismissed the application on the ground that since the main file has been decided, thus the application was not maintainable. The appellant came to know that his case was adjourned to 6.8.2016 instead of 3.9.2016 after 21.7.2016 and on 6.8.2016 the same was dismissed in default due to non-appearance of appellant and for want of prosecution vide the impugned order. It has been mentioned that the absence of the appellant before the learned trial Court was neither intentional nor deliberate, but was due to the facts and circumstances narrated above without any fault of the appellant, while the case was fixed for appearance of the accused through non-bailable warrants and so the presence of the appellant was not specifically required even otherwise, so the learned trial Court had acted in violation of the spirit of Section 256 Cr.P.C. Therefore, the impugned order 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.

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, Ambala, for appearance of the accused through non-bailable warrants, so the presence of the appellant was not specifically required even otherwise.

The learned counsel for the appellant argued that the appellant was appearing in this complaint regularly but on one of the dates on account of wrong noting of date of hearing he could not appear before the learned trial Court, therefore, his absence on one date was not intentional. Neither the appellant-complainant nor his counsel could appear before the trial Court on 6.8.2016 due to wrong noting of date of hearing. 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, Ambala, 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

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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, Ambala, 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 18.3.2019.

February 27, 2019.

(Inderjit Singh)
Judge

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