

In the High Court of Punjab and Haryana at Chandigarh

.....

(1) Criminal Appeal No.AS-96 of 2019

.....

Date of decision:11.03.2019

H.D.F.C. Bank Ltd.

...Appellant

v.

Gurwinder Singh

...Respondent

....

(2) Criminal Appeal No.AS-97 of 2019

.....

H.D.F.C. Bank Ltd.

...Appellant

v.

Jagroop Singh

...Respondent

....

(3) Criminal Appeal No.AS-98 of 2019

.....

H.D.F.C. Bank Ltd.

...Appellant

v.

Makhan Nath

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Saurabh Bhardwaj, Advocate for the appellant.

Ms. Amanpreet Kaur Sabharwal, Advocate for the respondent
in Cr. Appeal No.AS-96 of 2019.

None for the respondent in Cr. Appeal No.AS-97 of 2019.

Mr. Ajit Singh Natt, Advocate for the respondent in Cr. Appeal
No.AS-98 of 2019.

.....

Inderjit Singh, J.

This order will dispose of the above mentioned three appeals which have arisen out of the acceptance of Criminal Misc. Nos.A-1783-MA of 2017, 1737-MA of 2017 and 1796-MA of 2017 granting leave to file appeals vide orders passed today by this Court.

Learned counsel for the parties agree that the appeals may be heard today itself. I have heard learned counsel for the parties in the appeals.

These criminal appeals have been filed against the impugned orders dated 6.6.2017 passed by learned Judicial Magistrate Ist Class, Patiala, vide which the complaints filed by H.D.F.C. Bank Ltd. against Gurwinder Singh, Jagroop Singh and Makhan Nath under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') have been dismissed in default for want of prosecution and the accused have been acquitted of the allegations levelled against them.

It has been stated in the grounds of appeals that the learned trial Court while passing the orders dated 6.6.2017 had grossly erred in law as well as facts in dismissing the complaints for non-prosecution and acquitting the accused for the offence under Section 138 of the NI Act. It has been further stated that these orders are liable to be set aside being illegal, null and void and the respondents are liable to be prosecuted in accordance with law. It has been submitted that the cases were fixed for 6.6.2017 for cross-examination of complainant's witnesses. It has been submitted that on 6.6.2017 the authorised officer, namely, Jagjot Singh was

busy in the Court of learned Chief Judicial Magistrate, Mansa, as there six more cases related to the Bank were fixed for cross-examination of witnesses and the authorized officer struck there for the complete day. The same facts were duly intimated to the counsel, however, due to some inadvertent mistake, the counsel could not inform the Court despite the fact that the counsel was present in the same Court for examination of his witnesses in some another case under the impression that these cases were also stand adjourned along with other cases. However, on the said date the learned trial Court without issuing any notice or without giving any intimation to the present complainant to put appearance, dismissed the complaints for want of prosecution and discharged/acquitted the accused. It has been mentioned that the orders passed by the learned trial Court are based on surmises and conjectures and are liable to be set aside. It has been mentioned that the complainant had been appearing before the learned trial Court mostly on each and every date of hearing. Therefore, the impugned orders are liable to be quashed/set aside as the complainant was unable to attend the Court on that day due to the above mentioned facts. It has been further prayed that the complaints of the appellant may be restored to its original numbers, in the interest of justice.

In these cases, notice of motion was issued and the learned counsel for the respondents have put in appearance and contested these appeals.

The complaints were pending before the learned Judicial Magistrate Ist Class, Patiala for cross-examination of witnesses and on one date for the non-appearance of the authorised officer of the complainant,

these complaints filed under Section 138 of the NI Act have been dismissed for want of prosecution vide the impugned orders.

The learned counsel for the appellant argued that the appellant was appearing in these complaint cases and his absence on one of the dates was not intentional. Neither the authorised officer of the appellant-complainant nor his counsel could appear before the trial Court on 6.6.2017 due to the fact that he was busy in the Court of learned Chief Judicial Magistrate, Mansa in other cases. Learned counsel for the appellant argued that the authorised officer of 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 these complaint cases nor there is anything on the record to show that there was any mala fide intention on the part of the authorised officer of the complainant/appellant for his absence from the proceedings. The complainant/appellant has given the ground in the appeals that the complainant and his counsel could not appear before the Court. There was no necessity to dismiss the complaints vide impugned orders on that day. The Court has also not considered the fact that earlier the authorised officer of the complainant was appearing in these cases regularly. The absence of the authorised officer of the complainant on one date in the complaint cases is no ground to dismiss the complaints.

In the facts and circumstances of the present cases, I find that the impugned orders passed by the learned Judicial Magistrate Ist Class, Patiala, have caused miscarriage of justice. If these orders are 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.

Therefore, from the above, I find merit in these appeals and the same are allowed. The impugned orders passed by the learned Judicial Magistrate Ist Class, Patiala, dismissing the complaints are set aside.

These complaints are ordered to be restored at the stage from where these were 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 2.4.2019.

March 11, 2019.

(Inderjit Singh)
Judge

hsp

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