

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-100 of 2019

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Date of decision:13.03.2019

Shaman Kumar

...Appellant

v.

Pardeep Gupta

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Subhash Chand, Advocate for Mr. Vaibhav Narang,
Advocate for the appellant.

Mr. Navjot 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-934-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 22.1.2016 passed by learned Judicial Magistrate Ist Class, Ludhiana,
vide which the complaint filed by Shaman Kumar against Pardeep Gupta
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 and the accused has been acquitted.

It has been stated in the grounds of appeal that the complainant was regularly appearing in the case from 29.11.2014. However, the complainant could not appear on 4.1.2016 and the matter was adjourned to 14.1.2016. On 14.1.2016, the Presiding Officer was on leave and the file was taken up by learned Duty Magistrate. However, the complainant could not appear under the impression that the Presiding Officer is on leave. It has been mentioned that on 21.2.2016, the complainant due to his ill health was recommended bed rest for three days by the doctor, resultantly, on 22.1.2016 the appellant could not appear and the complaint was dismissed in default and the accused was acquitted. On that day the case was fixed for cross-examination of complainant's witness. The learned Judicial Magistrate Ist Class, Ludhiana has not considered that initially for almost 1½ years the accused was evading service and even the proclamation has been issued against him. Therefore, the order dismissing the complaint in default is wrong, illegal and unsustainable. 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, Ludhiana, and the appellant could not appear on that day due to his ill health 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 his evidence was also closed and the case was fixed for cross-examination of complainant's witness and his absence on that date was not intentional, but due to his ill health. Neither the appellant-complainant nor his counsel could appear before the trial Court on 22.1.2016 due to the fact that the complainant was ill. 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 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 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

[4]

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 8.4.2019.

March 13, 2019.

(Inderjit Singh)
Judge

hsp

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