

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

(227)

CRA-AS-211-2017

Date of Decision : September 03, 2021

Chetna Mittal

.. Appellant

Versus

State of Haryana and others

.. Respondents

(Through Video Conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vivek Goyal, Advocate, for the appellant.

Ms. Dimple Jain, Assistant Advocate General, Haryana.

Mr. Pardeep Singh Poonia, Advocate, for the complainant.

HARSIMRAN SINGH SETHI J. (ORAL)

Present is the appeal, which has been preferred by the complainant against the order dated 08.12.2015 by which, the complaint was dismissed for the want of prosecution.

Learned counsel for the appellant submits that notice in the complaint was issued and after the issuance of the notice, the complainant could not appear because the respondents had filed a criminal case against the appellant and the appellant was busy pursuing her remedy in the criminal case but the trial Court by adopting a strict stance, dismissed the complaint due to the absence of the appellant by terming it that the appellant does not want to pursue the same.

Learned counsel for the respondents submits that it is the duty of the complainant to be present on the date fixed before the Court and even

the absence and reasons for the same have to be informed to the Court but as nothing was informed to the Hon'ble Court about the reasons for not appearing to support the complaint, no fault can be found in the impugned order by which, the complaint filed by the appellant was dismissed for want of prosecution and therefore, the present appeal may kindly be rejected.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

From the impugned order, it transpires that the appellant was not present on 27.11.2015 and for the next date, the notices were issued to the complainant to remain present on 08.12.2015. Learned trial Court has noticed that the notices issued to the complainant were not served upon her but still, the Court proceeded ahead of dismissing the complaint for non prosecution. It is not a case where the absence of the complainant from the case was abnormal. Merely being not present on two dates, cannot be construed as an intention not to press the complaint.

It is a settled principle of law that the lis between the parties should be decided on merits as far as possible. The dismissal for want of prosecution should be only after exhausting all the remedies when the Court is sure that the complainant is not interested in pursuing the remedy any further. In the present case, the fact shows that the complainant was not present on 27.11.2015 and the notices issued to the complainant for the next date were not served upon her still, the complaint was dismissed for non prosecution. This order cannot be sustained.

The Hon'ble Supreme Court of India in **Crl. Appeal No.1150 of 2007 titled as Madan Lal Kapoor versus Rajiv Thapar and others, decided on 31.08.2007**, has held that Court cannot dismiss revision in default, it

must be decided on merits. The relevant paragraphs of the said judgment is as under:-

"3. This appeal is directed against the order passed by the learned Single Judge of the High Court of Delhi in Criminal Revision Petition No. 42 of 2000 dated August 8, 2005. The learned Single Judge dismissed the Criminal Revision Petition filed by the appellant herein by the order which reads thus;

"In spite of notice, nobody appears for the petitioner today. Crl. Rev. P. 42/2000 is accordingly dismissed in default for non-prosecution."

4. The matter relates to administration of criminal justice. As held by this Court, a criminal matter cannot be dismissed for default and it must be decided on merits. Only on that ground the appeal deserves to be allowed.

*5. Thus in **Bani Singh and ors v. State of U.P., 1996 (3) RCR (Criminal) 201: 1996 (4) SCC 720**, a three Judge Bench of this Court held that a criminal appeal should not be dismissed in default but should be decided on merits. If despite notice neither the appellant nor his counsel present, the Court should decide the appeal on merits. If the appellant is in jail the Court can appoint a lawyer at State expense to assist it. This would equally apply to the respondent.*

*6. In **Bani Singh and Ors. v. State of U.P. (supra)** the Supreme Court over-ruled its earlier decision in **Ram Naresh Yadav and Ors. v. State of Bihar, 1987 (2) RCRF (Criminal) 174: AIR 1989 (1987?) SC 1500** in which it was held that a criminal appeal can be dismissed for default.*

*7. In **Parasuram Patel and Anr. v. State of Orissa, (1994) 4 SCC 664** the Supreme Court held that a criminal appeal cannot be dismissed for default.*

8. In our opinion the same reasoning applies to criminal revisions also, and hence a criminal revision cannot also be dismissed in default.”

Keeping in view the above, the present appeal is allowed. The order dated 08.12.2015 is set aside and the trial Court is directed to decide the complaint upon merits in accordance with law.

September 03, 2021
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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