

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

227

CRR-1385-2019 (O&M)

Date of Decision: 07.12.2022

MANJIT KUMAR

...Petitioner

Versus

KAMALJEET SINGH

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Mandeep Kaushik, Advocate for the petitioner.
Mr. Naveen Bawa, Advocate for the respondent.

AMAN CHAUDHARY, J.

The petitioner has challenged the judgment dated 17.05.2019 passed by the First Appellate Court, whereby his appeal against the order dated 11.01.2016 of the trial Court, convicting and sentencing him under Section 138 of Negotiable Instruments Act to undergo RI of 1 year along with fine of Rs.5,000/-, as well as the application filed under Section 391 Cr.P.C., has been dismissed.

Learned counsel submits that the petitioner aggrieved against the judgment of conviction passed by the trial Court, had preferred an appeal before the learned Sessions Judge, along with which an application under Section 391 Cr.P.C. dated 06.08.2018, for leading additional evidence was filed wherein notice was issued on 06.03.2019 for 02.05.2019 for filing of reply by the respondent. On the adjourned date the revisionist-petitioner was unable to appear before the Court due to noting down the wrong date, upon

which his bail, bail bonds and surety bonds were cancelled and forfeited to the State and non-bailable warrants were issued vide order dated 02.05.2019, Annexure P-3, for 14.05.2019. On the said date the warrants were received back unexecuted and fresh non-bailable warrants were issued for 17.05.2019, vide order dated 14.05.2019, Annexure P-4. Thereafter the First Appellate Court without even waiting for the execution of the non-bailable warrants and without procuring the presence of the revisionist for taking further action against him as per law, dismissed the appeal as also the application filed under Section 391 CrPC, vide judgment dated 17.05.2019, Annexure P-5. His submission is that the non-appearance of the petitioner and his counsel was on account of noting down the wrong date but thereafter without first executing the non-bailable warrants, the First Appellate Court dismissed the appeal itself in haste and instead of adjourning the case or appointing amicus or an advocate from legal services authority. To buttress his submission, reliance is placed on the judgment of Hon'ble The Supreme Court of India in the case of **Rakesh and another vs. State of Madhya Pradesh**, 2011(12) SCC 513.

On the other hand, learned counsel for the respondent submits that the learned Appellate Court after appreciating the grounds averred in the appeal has rightly dismissed the appeal. Thus, he prays for the dismissal of the present revision petition.

Heard.

At the outset it may be accentuated that admittedly as per order dated 02.05.2019, the non-bailable warrants issued to procure the presence of the petitioner were received back unexecuted, whereafter fresh non-

bailable warrants were issued on 14.05.2019 for a short date i.e.17.05.2019. On the said date, the Court, without recording the factum as to whether non-bailable warrants, were executed or not, went ahead to outrightly dismiss the appeal. The orders read thus:

Order dated:- 14.05.2019

“Non-bailable warrants of appellant received back unexecuted. Case called repeatedly. Today the undersigned has to proceed on leave after lunch so no time left for disposal of the appeal as per previous order. Now to come up on 17.05.2019 and fresh non-bailable warrants of appellant be issued.”

Order dated:- 17.05.2019

“Arguments heard. Vide my separate detailed judgment of even date, the appeal as well as application under Section 391 Cr.P.C. are dismissed. Lower Court record along with copy of this judgment be sent back. Appeal file be consigned to the record room complete in all respects.

It is apposite to refer to the judgment of Hon'ble The Supreme Court of India in the case of **Rakesh and another** (supra), wherein it has been held as under:

“2. It is brought to our notice that when the appeals were heard by a Division Bench of the High Court, none appeared for the appellants. The State was represented by the Deputy Advocate General for the State. This Court has pointed out in a series of decisions that where the

accused is unrepresented it is in the interest of justice to appoint an amicus curiae to assist the Court, or if the Court so considers proper and appropriate to refer the matter to the Legal Aid Committee which may appoint an advocate to represent the accused.

3. This is a case in which a serious charge of murder is levelled against the accused and by a very short judgment the High Court has upheld their conviction. We notice from the judgment of the High Court that there is no discussion whatsoever of the evidence on record, perhaps because the Court did not have the assistance of a counsel representing the accused.

4. In these circumstances, without expressing any opinion on the correctness of the impugned judgment of the High Court, we set aside the same and remit the matter to the High Court for fresh decision in accordance with law. The High Court shall hear the appeals afresh after appointing an advocate to represent the appellants, in case the appellants do not make any arrangement for their representation before it. It will also be open to the High Court to provide legal aid to the appellants through the Legal Aid Committee.”

As has been held in the judgment referred to hereinabove, neither was an amicus curiae nor legal aid counsel appointed by the Appellate Court to assist it for and on behalf of the present revisionist-petitioner.

Adverting to the facts of the present case inasmuch as that due to wrong noting down of the date, the petitioner could thus not appear before the Court, which seems to be justified explanation of his absence. At times, the accused or his counsel can be prevented by sufficient reasons to put an

appearance before the Court on a given date and every such absence cannot necessarily be construed as deliberate and willful. Further, the fact that there is nothing on record to show that the accused-petitioner had either even on previous occasions defaulted or was careless or negligent in pursuing his appeal or was intentionally delaying the adjudication thereof. The petitioner who stood convicted would have gained nothing by not appearing before the Court in the appeal filed by him. These are the facts that the Appellate Court ought to have taken into account before proceeding to dismiss the appeal on merits, that too rather hastily.

Insofar as the non-appearance of the counsel for the accused-petitioner is concerned, a reference is pertinent to be made to the judgment of Hon'ble The Supreme Court of India in the case of '**Rafiq and another vs Munshilal and another**, AIR 1981 SC 140, wherein it was held that, "What is the fault of the party who having done everything in his power expected of him, would because of his advocate... The problem that agitates us is whether it is proper that a party should suffer for the inaction, deliberate omission, or misdemeanour of his agent... We cannot be a party to an innocent party suffering injustice merely because of his chosen advocate defaulted." Reiterating the aforesaid view, Hon'ble The Supreme Court in the case of **Shaikh Mukthar and another vs. State of Andhra Pradesh**, (2020) 19 SCC 178, has observed that "we find from the judgment of the High Court that the appellants were not heard in the High Court. The appellants' advocate remained absent on the date of hearing. The appellants should not have been penalised for the same."

In view of the peculiarity of facts and circumstances of this case,

judgments referred to hereinabove and to strike a balance so that no prejudice is caused to any of the parties, this Court finds that ends of justice would be adequately met, in case the matter is remitted to the Appellate Court for decision afresh on the appeal and the application filed under Section 391 Cr.P.C, by granting an effective opportunity to the present petitioner to advance submissions.

In view of the above, the present revision petition is allowed. The judgment dated 17.05.2019 is hereby set aside. The matter is remitted to the Appellate Court to decide the appeal filed by the petitioner afresh along with the application, after hearing the parties in accordance with law.

December 07, 2022
Rimpal

(AMAN CHAUDHARY)
JUDGE

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