



CRR-915-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-915-2024 (O&M)

Date of decision : May 06, 2024

Megha

....Petitioner

VERSUS

Pardeep Dahiya

....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Parminder Singh, Advocate, for the petitioner

KULDEEP TIWARI, J.

1. Through the instant revision petition, challenge is thrown to 1.4.2024, passed by the learned Additional Sessions Judge, Karnal, whereby appeal against the judgment and order of conviction dated 20.2.2024, passed by the learned trial court concerned, has been dismissed for non-prosecution.

2. The petitioner was convicted and sentenced to undergo simple imprisonment for one year along with compensation amount of Rs 15,00,000/-, under Section 138 of the Negotiable Instruments Act, vide order dated 20.2.2024, passed by the learned trial court concerned. Having aggrieved, the petitioner preferred an appeal. Since, no one could appear on behalf of the petitioner on dated

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1.4.2024, the appeal was dismissed for non-prosecution.

3. Learned counsel for the petitioner submits that on dated 1.4.2024, the petitioner was down with fever and cough, while her counsel was away to Sri Mata Vaishno Devi Shrine. Due to the said reason, the petitioner was not able to establish contact with her counsel, consequently, none appeared on behalf of the petitioner. Learned counsel for the petitioner further submits that for the reasons beyond control of the petitioner, she could not appear on the said date. Therefore, there was no *mala fide* intention on the part of the petitioner, for not appearing before the learned appellate court concerned, rather her absence was *bona fide*.

4. The inference, as becomes generated from the record is that, the petitioner could have, in no way, derived any benefit from her absence in the appeal (*supra*), rather it would be her, whose rights would be, and have indeed been adversely affected in such circumstances. The absence of the petitioner or her counsel cannot be enure to the benefit of the complainant/respondent. Moreover, since the petitioner had remained unrepresented only on one date of hearing, therefore, the learned appellate court concerned, instead of straightway adopting such a harsh approach of dismissing the appeal (*supra*), for want of prosecution, ought to have exercised some leniency, inasmuch as, mere absence of the petitioner on one



date, cannot constitute the bedrock for dismissal of the appeal.

5. Gainful reference in the above regard can be made to ***Purushotam Mantri v. Vinod Tandon alias Hari Nath Tandon, 2008(3) Punjab Law Reporter 595 (P&H)***, wherein, it has been observed that “*..it would be too harsh on the petitioner to non-suit him merely for his non-appearance on one date....*”

6. Furthermore, reference can also be made to case titled as ***“Narender Parashar Versus Jagbir Singh”***, ***Law Finder Doc Id # 192748***, wherein, a Co-ordinate Bench of this Court, while dealing with an identical issue, has made the hereinafter extracted observations:-

“...The doctrine of 'audi alteram partem' too contemplates that no one should be condemned unheard. If the impugned order is allowed to hold ground without any fault of the appellant, he will feel prejudiced in his right. In the words of F. Bucan "Nothing rankles more in the human heart than brooding sense of injustice." If the appellant is not afforded the opportunity to substantiate the allegations contained in complaint by leading evidence, it will go on rankling in his mind that injustice has been done to him. The Courts are here to administer justice....”

7. In view of the law laid down in judgments (*supra*), as also taking into account the well settled proposition of law that, owing to



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fault of counsel, a party to litigation cannot be made to suffer, and that, the rights of the parties should be decided on merit as far as possible, therefore, this Court deems it just and appropriate to set aside the impugned order dated 1.4.2024, and, to remand the instant appeal, to the learned appellate court concerned, otherwise the petitioner will suffer an irreparable loss.

8. Consequently, the impugned order dated 1.4.2024 is set aside, and the appeal filed by petitioner is ordered to be restored to its original number, and its proceedings shall continue from the stage from where it was dismissed by the learned appellate court concerned. The learned appellate court concerned is directed to proceed further as per law.

9. The petitioner is directed to appear before the learned appellate court within 10 days from today and furnish fresh bail bonds.

10. **Disposed** of accordingly.

May 06, 2024
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(KULDEEP TIWARI)
JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>