

CRM-A-711-2022

2024:PHHC:061737

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-711-2022

Date of Decision : April 03, 2024

Gurpreet Singh

.....Petitioner

VERSUS

Dhana Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Kartar Singh, Advocate
for the appellant.

Mr. Jugraj Singh, Advocate
for the respondent.

KULDEEP TIWARI, J.

1. The instant application has been preferred by the applicant seeking leave to appeal against the judgment dated 14.7.2022 passed by the Sub Divisional Judicial Magistrate, Ratia, whereby, the respondent-accused was acquitted on account of non presence of the complainant and the complaint was dismissed under Section 256 Cr.P.C.

2. Learned counsel for the applicant would submit that the learned trial Court concerned has passed the verdict of acquittal in haste as on the same day after lunch i.e. about 12.50 p.m., an application for restoration was moved by the complainant, however, the same was also dismissed vide order of even date on the ground that the trial Court has no power to restore the same as it would be against the provisions contained under Section 362 Cr.P.C. In this regard, he has drawn the

attention of this Court to order dated 14.7.2022 (Annexure A-2). He further submits that the learned trial Court should have wait for the presence of the complainant till the rising of the Court, however, the same has not been done.

3. Since the principal grievance canvassed by the applicant/appellant herein, hinges upon dismissal of his complaint, merely owing to him remaining unrepresented before the learned Magistrate concerned, therefore, this Court deems it inessential to augment this remand order with factual matrix of the present case, and consequently, proceeds to pen down an opinion upon the grievance (supra).

4. The defence proffered by the applicant/appellant behind him remaining absent on the date fixed before the learned trial Court concerned, is that he has very much caused appearance i.e. after lunch before the learned trial Court concerned and this fact could reflect from Annexure A-2 i.e. order passed by the learned trial Court concerned on the same date vide which his application for restoration of complaint was declined on the ground of being not maintainable. This fact clearly reflects that the applicant has no *mala fide* intention rather he was pursuing his case with all sincerity and with *bona fide* intention.

5. This Court has heard the learned counsels for the contesting litigants and also perused the entire record.

6. For the sake of convenience and ready reference, the impugned order dated 14.07.2022 is reproduced hereinafter:-

“Heard since the complaint under Section 138

N.I.Act has been dismissed under Section 256 Cr.P.C. for non-appearance of the complainant today, this Court is seized of jurisdiction to restore the same as it would be against provisions contained in Section 362 Cr.P.C. Accordingly, the application in hand stands dismissed. Papers be tagged with main case file which as already been ordered to be consigned to record room, after due compliance.”

7. Moreover, since the applicant-appellant had caused appearance in the after noon before the learned trial Court concerned, therefore, it further strengthen the case of the applicant-appellant that instead of dismissing the complaint for want of non prosecution, the learned trial Court concerned ought to have exercised some leniency, inasmuch as, mere absence of the complainant on one date, cannot constitute the bedrock for dismissal of the complaint.

8. 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 nonappearance on one date....”

9. 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...."

10. Also, in case titled as ***"Nitesh Kumar Vs. Sonu alias Sunil Kumar"***, ***Criminal Appeal No. AS-88 of 2016, Decided on: 06-04-2017***, a Co-ordinate Bench of this Court has held that the cause of merit and substantial justice is to prevail over technical consideration. The relevant paragraph of this judgment is reproduced hereinafter:-

"8. In the facts and circumstances of the present case, I find that the impugned order passed by the learned Judicial Magistrate Ist Class, Gurgaon, 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 or cause of substantial justice are pitted against each other, the cause of merit and substantial justice is to prevail."

11. In view of the law laid down in judgments (supra), as also taking into account the well settled proposition of law that, owing to 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 14.07.2022, and, to remand the complaint (supra) to the learned Magistrate concerned, otherwise the applicant/appellant will suffer an irreparable loss.

12. Consequently, the impugned order dated 14.07.2022 is set aside and the complaint (supra) 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 Magistrate concerned. The learned Magistrate concerned is directed to proceed further as per law, after giving notice to the parties concerned.

13. **Disposed** of accordingly.

April 03, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No