

**CRM-A-1422-2023****1****IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH****CRM-A-1422-2023****Reserved on: 1.10.2024****Pronounced on: 15.10.2024**

Ved Parkash

....Applicant

Versus

A.D.Interior and Safety Systems and anr

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Rohit Sharma, Advocate for the applicant.
Mr. Naveet Singh Chhokar, Advocate for respondent No.1.

KULDEEP TIWARI,J.

1. The instant appeal has been filed against the order dated 17.7.2023, rendered by learned Judicial Magistrate 1st Class, Gurugram whereby, merely owing to the complainant (petitioner herein) remaining unrepresented, the complaint bearing No. NI/17305/2019, instituted by him under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act'), was dismissed for want of prosecution.

2. Since the principal grievance canvassed by the 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*).

3. The learned counsel for the appellant submits that, prior to the dismissal of complaint (*supra*), for want of prosecution, the appellant and

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his counsel had been regularly appearing before the learned Magistrate concerned, except on 12.6.2023; 15.6.2023; 10.7.2023 and on 17.7.2023. The defence proffered by the appellant behind him remaining unrepresented before the learned Magistrate concerned, is that, owing to some illness, he could not appear on the aforesaid dates. Therefore, there was no *mala fide* intention on the part of the appellant, for not appearing before the learned Magistrate concerned, rather his absence was *bona fide*.

4. To substantiate his argument, he further relies upon a judgment passed by a co-ordinate Bench of this Court in **Harinder Singh vs. Rajinder Singh, 2023(4) Law Herald 3056**.

5. Learned counsel for the respondent opposed the prayer of the appellant for restoration of the complaint, and submits that the appellant has not appeared intentionally before the learned trial court concerned, on several dates, thereby, compelling the learned trial court to dismiss the complaint filed by the appellant.

5. This Court has heard the learned counsel for the parties concerned, and also perused the entire record.

6. For the sake of convenience and ready reference, the impugned order dated 17.7.2023, is reproduced hereinafter:-

“It is 02:00 PM. None present on behalf of complainant even after repeated calls since morning. Perusal of the file reveals, that the instant complaint was filed on 24.04.2019. The complainant did not appear before the court on 12.06.2023. Therefore, matter was fixed to 15.06.2023 & 10.07.2023 for presence of complainant. Today as well, the complainant has not entered his appearance before the court. in these



circumstances, this court is of the considered opinion that sufficient opportunity has been granted to the complainant to appear before the court, but the complainant has not appeared for the reasons best known to him. It further appears, that the complainant is not interested in pursuing the present complaint filed by him. Thus, the instant complaint is hereby dismissed in default. File be consigned to record-room after due compliance, complete in all respects.”

7. The inference, as becomes generated from the record is that, the appellant could have, in no way, derived any benefit from his absence in the complaint (*supra*), rather it would be him, whose rights would be and have indeed been adversely affected in such circumstances. The absence of the appellant/complainant or his counsel cannot be enure to the benefit of the respondents/accused. This inference garners strength from the fact that, there is nothing available on the record, which may even remotely suggest that there was any *mala fide* intention on the part of the appellant behind his absence from the proceedings. Moreover, since the appellant had remained unrepresented, therefore, the learned Magistrate concerned, instead of straightway adopting such a harsh approach of dismissing the complaint (*supra*) for want of prosecution, ought to have exercised some leniency, inasmuch as, mere absence of the complainant, 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 non- appearance 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



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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 17.7.2023, and, to remand the complaint (*supra*) to the learned Magistrate concerned, otherwise the appellant will suffer an irreparable loss.

12. Consequently, the impugned order dated 17.7.2023, 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.

(KULDEEP TIWARI)
JUDGE

October 15, 2024
'tiwana'

Whether speaking/reasoned ? Yes/No
Whether Reportable ? Yes/No