



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

**CRM-A-1798-MA-2016
DECIDED ON: 17.05.2024**

KRISHNA

.....APPELLANT

VERSUS

DAVINDER KUMAR AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Puneet Bali, Advocate
 for the appellant.

 Mr. Sandeep Arora, Advocate
 for respondents No. 1, 2 and 4.

SANDEEP MOUDGIL, J (ORAL)

1. This appeal has been filed challenging the order dated 16.12.2014 whereby the complaint under Section 494 IPC filed by the appellant against respondent No.1 (husband) has been dismissed in default for non-prosecution by the Magistrate, Amabala City.
2. It has been contended on behalf of learned counsel for the appellant that the non-appearance of the appellant before the trial Court is neither intentional nor willful but on account of the fact that her counsel misled her by telling that her presence is not required. Her counsel neither informed her nor he himself appeared before the Trial Court and kept on giving lame excuses. He further contends that the appellant was never issued any notice or any kind of intimation regarding her non-appearance in the Court and directly dismissed the complaint for non-prosecution.



3. Heard.

4. The trial Court has dismissed the complaint in the absence of the learned counsel for the complainant. When the appellant became aware of the fact that her complaint had been dismissed in the absence of her advocate and she was never intimated about the same by her counsel, she took the brief from the counsel and preferred the appeal in this Court. Observing the fact that the Trial Court had failed to apply its judicious mind and has just casually dismissed the case for non-prosecution by observing that the case was called for several times since morning and nobody turned up, therefore, dismissed the complaint for want of prosecution, which is sufficient for this Court to infer that the Court below should have at least summoned the appellant and would have given a fair hearing so that either of the parties should not have suffered any prejudice and rather has adopted a very callous approach.

5. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of petition, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the Court to inquire as to what is happening in the Court with regard to his case nor is he to



act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. The problem that agitates is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative.

6. In view of the foregoing, discussion, it is held that the trial Court has adopted a very casual and pedantic approach while dismissing the complaint without appreciating that rules of procedure are handmade of administration of justice and the same are to be applied to enhance the cause of justice and not to defeat the same. Thus, by restoring the present complaint this Court is of the view that neither of the parties would suffer prejudice rather it would help in facilitation of the case to secure the ends of justice.

7. As a consequence the impugned order dated 16.12.2014 is set aside and the case is remanded back to the trial Court for adjudicating it afresh on merits as per law.

8. Petition stands disposed of. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

17.05.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>