

2024:PHHC:015653

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

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**CRM-A-1759-2023 (O&M)
DATE OF DECISION: 05.02.2024**

ASHOK KHINDER

... APPLICANT

Versus

VIKRANT KHINDER

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Bhriгу Dutt Sharma, Advocate the applicant(s).

SANDEEP MOUDGIL, J.(Oral)

This application is filed seeking leave to Appeal against the order dated 16.10.2023 passed by the Judicial Magistrate, First Class Jalandhar whereby the complaint was dismissed for non-prosecution.

Learned counsel for the applicant submits that on 16.10.2023, the applicant/complainant could not appear before the Court as on the previous date i.e. 04.09.2023, the clerk of the counsel for the complainant-appellant wrongly noted the next date as 26.10.2023 instead of 16.10.2023 and as a consequence, thereof could not appear. The error is on the part of the counsel for the complainant as his clerk had noted down the wrong next date. The Trial Court without appreciating the isolated absence on behalf of the complainant dismissed the complaint for non-prosecution. Learned counsel for the applicant has argued that the order dated 16.10.2023 was passed by the Trial Court dismissing the complaint for non-prosecution in light of the fact that the complainant could not appear due to inadvertent error which

was neither deliberate nor intentional. Therefore, the impugned

order dismissing the complaint for non-prosecution is totally unwanted and the same deserves to be quashed.

This Court is of the view that manifest injustice would be meted out to the appellant-complainant who has led major part of the evidence and only one witness has remained to be examined and therefore, it would be of grave prejudice to him whereas no prejudice would be caused to the respondent if the complaint is decided on merit.

In light of the above, the impugned order is quashed. The appeal is disposed of however, subject to payment of costs of Rs.10,000/- to be deposited in Punjab and Haryana High Court Bar Clerk Association. The Trial Court is directed to decide the complaint on merits after proceeding from the date it was dismissed for non-prosecution after receiving the receipt of costs.

(SANDEEP MOUDGIL)
JUDGE

February 05, 2024
anuradha

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