

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

**CRM-A-970-MA of 2014**

**Date of Decision: January 28, 2016**

Sadbhawana Jewellers

...Appellant

Versus

M/s Paunahari Fab Com

...Respondent

**CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present: Mr. Kunal Dawar, Advocate  
for the petitioner.

None for the respondent.

**FATEH DEEP SINGH, J.**

**CRM No.18708 of 2014**

Heard on application for condonation of delay in  
filing of appeal.

Since inspite of notice, none has come present on  
behalf of the respondent to oppose the grant of this relief and in view of  
the grounds mentioned in the application for condonation of delay and  
in the light of settled position that a litigant cannot be denied access to  
justice on hyper technical grounds and in the interest of justice taking a  
lenient view, delay of 209 days in filing the appeal stands condoned.

CRM stands disposed off.

**CRM-A-970-MA of 2014**

In this appeal under Section 378(4) Cr.P.C. the  
appellant M/s Sadbhawana Jewellers have challenged the impugned  
orders dated 30.08.2013 passed by Judicial Magistrate 1<sup>st</sup> Class,

Faridabad dismissing the complaint of the complainant in default.

Heard learned counsel for the petitioner and perused the records of the case. A complaint by the complainant under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') was preferred by the present appellant against M/s Paunahari Fab Com on the grounds that respondent had obtained a friendly loan from the complainant for sum of ₹2 lacs and in discharge of said liability the accused issued a post dated cheque No.783266 dated 10.06.2009 for sum of ₹2 lacs drawn on Bank of India, Faridabad and assured that the same will be encashed on its presentation. It is alleged that on due presentation of the cheque through the banker of the complainant ICICI Bank Limited, New Delhi the same was dishonoured on account of insufficient funds on 9.11.2009 and after completing necessary formalities like issuance of legal notice Ex.C3 the complaint in question was made. The complainant appeared as PW1 and on the basis of his affidavit proved documents Ex.C1 to Ex.C4 and it is vide orders dated 23.12.2009 the learned Magistrate summoned the accused for commission of offence under Section 138 of the Act. In spite of issuance of process the accused failed to appear, thus, leading to issuance of bailable warrants and, thereafter, warrants of arrest were issued by the trial Court. The accused had put in appearance on 25.1.2011 before the trial Court and the matter was listed for consideration on notice of accusation on 21.9.2011 and, thereafter, it was adjourned to 2.11.2011 when the accused sought exemption of his appearance and the matter stood adjourned to 29.11.2011 when the impugned orders were passed.

In the light of the contention of the counsel for the petitioner, it is explicitly clear from the records of the trial Court that on the day when the orders of dismissed in default was passed there was no necessity of the presence of the complainant and rather it was for the

accomplishment of presence of the accused who had on the previous date of hearing sought an exemption of his appearance as well as for consideration on notice of accusation thus, no worthwhile requirement for the presence of the complainant was necessitated nor there is an element that the complainant is using dilatory tactics to agonise the accused party and, thus, also wasting the time of the Court as well. Thus, in view of the law laid down in **Associated Cement Co. Ltd vs. Keshvanand, 1998(1) RCR (Criminal) 309** it was undesirable for the trial Court to have proceeded in the matter to the detriment of the complainant-appellant. The complainant has been diligently pursuing his case since the institution of the complaint on 23.12.2009 and has undertaken the process to reap the fruit of his endeavour to have redressal of his grievance and, thus, dismissal of his complaint after such a long time when there being no legal necessity impels this Court to set aside the impugned orders, whereby, allowing the present appeal and order re-admission of the complaint.

The learned trial Court is directed to restore the complaint and proceed ahead into the matter as per law.

**(FATEH DEEP SINGH)**  
**JUDGE**

**January 28, 2016**  
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