

**CRA-AS-101 of 2018
CRA-AS-102 of 2018**

1

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

Sr.No.231

**CRA-AS-101 of 2018
(arising out of CRM-A-1654-MA-2017) &
CRA-AS-102 of 2018
(arising out of CRM-A-1661-MA-2017)**

Date of Decision:09.10.2018

M/s Libra Bus Service(P) Limited

....appellant

Versus

Amandeep Singh

.....respondent

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Pritam Singh Saini, Advocate and
Ms.Mannat Anand, Advocate
for the appellant

Mr.S.S.Grewal, Advocate
for the respondent

ARVIND SINGH SANGWAN, J. :

**CRM-24598-2017 in CRA-AS-101 of 2018
CRM-24604-2017 in CRA-AS-102 of 2018**

Prayer in these applications is for condonation of delay of 552
and 535 days, respectively, in filing the applications for leave to appeal.

For the reasons stated in the applications, the same are allowed.
Delay of 552 and 535 days in filing the applications for leave to appeal is
condoned.

CRMs stand disposed of.

These are applications, filed under Section 378(4) of the Code of Criminal Procedure, seeking leave to appeal against the order dated 02.11.2015, passed by the Chief Judicial Magistrate, Mansa, vide which, the respondent-accused has been acquitted of charges under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N.I. Act'*), by dismissing the complaint, filed by the appellant/complainant, for non-prosecution.

For the reasons stated in the applications, the same are allowed.

Leave to appeal granted.

On the direction of the Court, Office has assigned appeals number CRA-AS-101-2018 and CRA-AS-102-2018 to the present cases.

This order shall dispose of two appeals i.e. CRA-AS-101 of 2018 and CRA-AS-102 of 2018, as both arise out of the common impugned order dated 02.11.2015, passed by the Chief Judicial Magistrate, Mansa, vide which the complaint filed by the appellant under Section 138 of the N.I. Act was dismissed for non prosecution by passing the following order:

“Accused is present. None has appeared on behalf of the complainant on 30.09.2015 and thereafter on 26.10.2015. As such, notice was issued to the complainant on 30.09.2015 and the complaint was again adjourned on 26.10.2015 awaiting the presence of complainant till today. Today again, none has appeared on behalf of the complainant. Complainant has not come present since morning. Case called

several times since morning but none has appeared on behalf of complainant. It is 4.00 pm now. Court time is about to get over. Earlier also complainant has sought exemption from appearance on 05.12.2014,10.06.2015 and again on 17.08.2015. From the perusal of case file reveals that the complainant is not serious in pursuing this complaint. As such, present complaint stands dismissed in default for non prosecution. File be consigned to the judicial record room after due compliance.”

Brief facts of the cases are that the appellant had filed complaints under Section 138 of N.I. Act, on account of dishonouring of cheque of Rs.90,000/- (in CRA-AS-101 of 2018) and a cheque of Rs.20,000/- (in CRA-AS-102 of 2018). Learned counsel for the appellant submits that the complaint (in both the appeals) was filed on 05.12.2014 through an authorised signatory/Branch Manager of the appellant i.e. Krantiveer Singh and he was authorised to pursue the complaint before the trial Court.

Learned counsel for the appellant further submits that later on said Krantiveer Singh, left the job without informing the appellant about the status of the cases and on that account, the appellant/complainant could not appear before the trial Court on 02.11.2015 when the cases were taken up and were dismissed for non-prosecution.

Learned counsel further submits that under a wrong advice, the appellant filed criminal revisions before the Court of Sessions, which were later on dismissed on 19.04.2017 holding that the statutory appeal is not maintainable before the Sessions Court. Thereafter, the appellant has filed

the present appeals along with the applications for condonation of delay of 552 and 535 days.

Learned counsel for the appellant has submitted that the non-appearance on behalf of the appellant through its authorised representative was a bona fide mistake as the person authorised left the job and did not inform the appellant about the status of the case.

Learned counsel for the appellant has further submitted that during the pendency of the complaints, the personal appearance of the authorized representative was exempted on 17.08.2015. Therefore, after he left the job, the appellant was under the impression that their counsel will be representing them in the trial Court and the notice issued by the trial Court in this regard was not served.

In reply, learned counsel for the respondent has opposed the prayer on the ground that even the appeal was filed before the lower appellate Court at a belated stage and there is no valid ground for condoning the delay in filing the present appeals.

After hearing learned counsel for the parties, though the appellant has not shown any bona fide ground for non-appearance on 02.11.2015, however, considering the fact that the complaint was filed through an authorised signatory whose appearance was exempted on 17.08.2015 and admittedly he has left the job and later on, the complaint was dismissed for non prosecution on account of non appearance of counsel for the appellant, the appellant is entitled to restoration of complaint.

It is well settled principle of law that no one should be

condemned unheard and there is a single default on the part of the appellant. The complaint has been dismissed for non prosecution and the accused can be compensated by way of costs. Consequently, the complaints filed by the appellant under Sections 138 of the N. I. Act are restored back to their original number for decision on merits. The appellant-complainant is directed to appear before the trial Court/successor Court on 01.11.2018. The trial Court is directed to proceed further with the cases from the stage where those were dismissed, in accordance with law.

In view of the above, both the appeals are allowed subject to payment of costs of Rs.5000/- each, to be paid to accused on the next date of hearing before the trial Court.

(ARVIND SINGH SANGWAN)
JUDGE

09.10.2018
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Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No