

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRR-457-2018 (O&M)

Reserved on: 03.08.2022

Date of Pronouncement: 08.08.2022

Mukesh Sayal

...Petitioner (s)

Versus

Ravi Khurana

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Kanika Ahuja, Legal Aid Counsel
for the petitioner(s).

Mr. Gurcharan Dass, Advocate
for the respondent.

ANOOP CHITKARA, J.

On dishonor of cheque given by the respondent-Ravi Khurana to the petitioner-Mukesh Sayal, the petitioner filed a complaint against the respondent under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act”).

Vide judgment dated 9.4.2014, learned Judicial Magistrate Ist Class, Ludhiana convicted and sentenced the accused-respondent.

Feeling aggrieved, the convict filed a criminal appeal before the Session Court at Ludhiana and learned Additional Sessions Judge, Ludhiana, vide judgment dated 1.12.2017, set aside the judgment of conviction and remanded the matter back to the trial Court and directed that the case shall proceed from the stage of evidence of the complainant i.e. after

notice of accusation.

Challenging the aforesaid judgment of remand dated 1.12.2017, the complainant came up before this Court by filing the present revision petition.

After filing of the present revision petition, the petitioner was duly represented before this Court till 17.2.2020, however, after that, it appears that the petitioner lost interest in the matter and did not instruct his counsel and as such, there was no representation on behalf of the petitioner on three occasions. On 1.4.2022, this Court appointed a Legal Aid Counsel to represent the petitioner.

I have heard learned legal aid counsel representing the petitioner and learned counsel representing the respondent and gone through the case file.

A perusal of the impugned judgment passed by learned Additional Sessions Judge reveals that the accused was not afforded ample opportunities to prove his defence. Needless to say that the Negotiable Instruments Act has presumptions drawn in favour of the complainant i.e. the holder of the cheque and thus, given such presumptions, burden is on the accused and in case sufficient opportunity is denied to such an accused to lead his defence, then it would cause grave injustice.

In the present case, learned Additional Sessions Judge has given reason that the aforesaid blank cheque was handed over to one Ashwani Kumar, as security, and to whom a notice Ex.DW2/1 was issued in August, 2010 to return the aforesaid blank cheque. During the pendency of appeal, the convict filed an application under Section 391 CrPC read with Section 311 CrPC, seeking to recall the complainant with a view to cross-examine him on this aspect.

Thus, learned Appellate Court was justified in affording opportunity to the convict to prove his defence. Thus, a perusal of the entire order does not point out towards any illegality, based on which this Court can overturn the

same.

Given above, the present revision petition is dismissed and the parties are directed to appear before the trial Court within 30 days from today. However, it is directed that since the petitioner was unrepresented before this Court, as such, learned trial Court shall issue fresh notice to the complainant indicating the next date so fixed before it. Since this matter has already delayed for such a long period, as such, learned trial Court is directed to expedite the trial.

Registry to communicate this order to the trial Court.

(ANOOP CHITKARA)
JUDGE

August 08, 2022
AK

Whether speaking/reasoned:	Yes
Whether reportable:	No.