

2023:PHHC:135584

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

**Date of decision : 17.10.2023**

**1. CRM-15944-2017 in/and CRM-A-1061-MA of 2017 (O&M)**

Smt. Rekha .... Appellant  
versus  
Vijay Kumar ... Respondent

**2. CRM-16391-2017 in/and CRM-A-1087-MA of 2017 (O&M)**

Smt. Rekha .... Appellant  
versus  
Vijay Kumar ... Respondent

**3. CRM-17275-2017 in/and CRM-A-1116-MA of 2017 (O&M)**

Smt. Rekha .... Appellant  
versus  
Vijay Kumar ... Respondent

**4. CRM-17383-2017 in/and CRM-A-1169-MA of 2017 (O&M)**

Smt. Rekha .... Appellant  
versus  
Vijay Kumar ... Respondent

**CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

**\*\*\***

Present :- Mr. Amardeep Hooda, Advocate, for the appellant  
in all the cases.

Mr. Parmod Kumar Parmar, Advocate, for the respondent  
in all the cases.

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**PANKAJ JAIN, J. (ORAL)**

**CRM-15944-2017 in CRM-A-1061-MA of 2017**

Prayer in the application is for condonation of delay of 172  
days in filing the appeal.

For the reasons stated in the application, delay of 172 days  
in filing the appeals is condoned.

Application stand disposed of.

**CRM-16391-2017 in/and CRM-A-1087-MA of 2017**

Prayer in the application is for condonation of delay of 182 days in filing the appeal.

For the reasons stated in the application, delay of 182 days in filing the appeals is condoned.

Application stand disposed of.

**CRM-17275-2017 in/and CRM-A-1116-MA of 2017**

Prayer in the application is for condonation of delay of 182 days in filing the appeal.

For the reasons stated in the application, delay of 182 days in filing the appeals is condoned.

Application stand disposed of.

**CRM-17383-2017 in/and CRM-A-1169-MA of 2017**

Prayer in the application is for condonation of delay of 179 days in filing the appeal.

For the reasons stated in the application, delay of 179 days in filing the appeals is condoned.

Application stand disposed of.

**Main case**

The prayer in the application filed under Section 378(4) Cr.P.C. Filed by applicant- Smt. Rekha is for grant of special leave to appeal from the order dated 08.09.2017 passed by learned Judicial Magistrate 1<sup>st</sup> Class, Rohtak whereby the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 has been dismissed in default.

Upon considering the submissions, the instant applications are allowed and leave to prefer appeal is granted to the applicant.

Registry is directed to assign the number to the instant appeals forthwith.

Main cases

1. Since common questions of law and facts are involved in these appeals, therefore, these are taken up together and being disposed of by a common judgment.

2. These four appeals seeking leave to appeal are directed against the order dated 08.09.2016 passed by the learned Judicial Magistrate 1<sup>st</sup> Class, Rohtak, whereby the complaint preferred by the appellant was dismissed for non-prosecution on default of the appellant invoking provisions of Section 256 of the Code of Criminal Procedure (for short, 'the Code').

3. Counsel for the appellant-complainant has produced order dated 04.08.2016 passed by the trial Court to submit that the matter was fixed for appearance of the accused, who despite having received the summons have failed to appear. Further submits that once the matter was fixed for appearance of the accused, the trial Court ought not to have resorted by invoking provisions of Section 256 of the Code to dismiss the complaint. Reliance is being placed on law laid down by Hon'ble the Supreme Court in S. Rama Krishna vs S. Rami Reddy (D) By His Lrs. And others 2008 (5) SCC 535 and M/s BLS Infrastructure Limited vs M/s Rajwant Singh and others 2023 (4) SCC 326.

4. Per contra, counsel for the accused submits that it was not the first default of the complainant, however, he is not in a position to

dispute that the matter was indeed on the said date was fixed for appearance of the accused.

5. Having heard counsel for the parties and going through the record of the case, this Court finds that law with respect to invoking provisions of Section 256 of the Code already stands settled by Apex Court in Associated Cement Company Limited vs Keshvanand 1998 (1) SCC 687 which was followed in S. Anand vs Vasumathi Chandrasekar 2008 (4) SCC 67. These two judgments have further been followed in M/s BLS Infrastructure's case (supra), the relevant of which is as under :-

*“11. In the case of S. Anand (supra), addressing a situation where the complainant was absent but had already examined his witnesses, this Court observed as follows:*

*"12. Section 256 of the Code provides for disposal of a complaint in default. It entails in acquittal. But, the question which arises for consideration is as to whether the said provision could have been resorted to in the facts of the case as the witnesses on behalf of the complainant have already been examined.*

*13. The date was fixed for examining the defence witnesses. The appellant could have examined witnesses, if he wanted to do the same. In that case, the appearance of the complainant was not necessary. It was for her to cross-examine the witnesses examined on behalf of the defence."*

*After observing as above, in paragraph 15, it was held thus:*

*"15. ... when the prosecution has closed its case and the accused has been examined under section 311 of the Code of Criminal Procedure, 1973 the Court was required to pass a judgment on merit of the matter."*

*12. In Associated Cement Co. Ltd. (supra), the purpose of inserting a provision like Section 256 of the Code was discussed and in light thereof, in paragraph 16, it was observed as under:*

*"16. What was the purpose of including a provision like Section 247 in the old Code (or Section 256 in the new Code). It affords some deterrence against dilatory tactics on the part of a complainant who set the law in motion through his complaint. An accused who is per force to attend the court on all posting days can be put to much harassment by a complainant if he does not turn up to the court on occasions when his presence is necessary. The section, therefore, affords protection to an accused against such tactics of the complainant. But that does not mean if the complainant is absent, the court has a duty to acquit the accused in invitum."*

*After observing as above, it was held that where the complainant had already been examined as a witness in the case, it would not be appropriate for the Court to pass an order of acquittal merely on non-appearance of the complainant. Thus, the order of acquittal was set-aside and it was directed that the prosecution would proceed from the stage where it reached before the order of acquittal was passed."*

6. Thus, the test to invoke Section 256 of the Code is whether the proceedings were such for which the presence of the complainant was necessary. In the considered opinion of this Court, the trial Court failed to make itself alive of the situation that the matter was indeed fixed for appearance of the accused and, thus, was not justified in dismissing the complaint and ordering acquittal of the accused on mere non-appearance of the complainant.

7. In view of the above, the present appeals are allowed.
8. Parties are directed to appear before the trial Court on **28.11.2023**. Keeping in view the fact that the complaints are of the year 2015 and the appeals are pending before this Court since 2017, the trial Court is directed to conclude the trial expeditiously preferably within a period of 9 months.

( PANKAJ JAIN )  
JUDGE

**17.10.2023**  
VS

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable :      | Yes/No |