

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

**CRR No.1510 of 2023 (O&M)
Date of Decision : 14.07.2023**

Ram Asra

.....Petitioner

Versus

Balwinder Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vikram Jeet Singh, Advocate
for the petitioner.

PANKAJ JAIN, J.

CRM No.26700 of 2023

This is an application filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. seeking condonation of delay of 73 days in filing the instant revision petition.

For the reasons recorded in the application, the same is allowed. Delay of 73 days in filing the present revision petition is hereby condoned.

CRR No.1510 of 2023 (O&M)

This is a revision petition at the behest of convict challenging his conviction under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the N.I. Act') by the Trial Court and upheld by the Appellate Court.

2. Complaint was filed against the petitioner after cheque issued by him was dishonoured for insufficient funds. After analyzing the

evidence threadbare the Trial Court found the petitioner guilty of offence punishable under Section 138 of the N.I. Act and sentenced him as under :

offence	Sentence	Compensation	In default of payment of compensation
138 of N.I. Act	R.I. for 2 years	Rs.80,000/-	Further undergo 1/4 th period of substantive sentence.

3. In the appeal preferred by the petitioner the judgment of conviction was attacked claiming that the Trial Court erred in relying upon a shaky evidence and that the cheque in question was a forged and fabricated document without any consideration and that the notice and the complaint were not within the period of limitation. While attacking order of sentence it was claimed that the Trial Court erred in imposing fine equal to the cheque amount. The Appellate Court found that there is not even a suggestion put to the complainant in his cross-examination that the cheque in dispute does not bear signatures of the accused. Only suggestion is that the complainant took blank cheque from the accused and then filled the amount without producing any defence evidence to demonstrate the purpose for which the blank cheque was handed over to the complainant. Thus, the plea of the cheque being forged and fabricated cannot even be looked into and moreover there is no averment as to in which manner the cheque was forged and fabricated. The Court further found that the cheque was dated 19th of May, 2015 which was returned for 'insufficient funds' by the bank vide memo dated 1st of June, 2015. Complainant issued legal notice on 15th

of June, 2015 and the complaint was instituted on 20th of July, 2015. Thus, there is no reason to hold that the complaint was barred by limitation and was in fact a validly instituted complaint in compliance with the procedure as laid down under Section 142 of the N.I. Act.

4. Counsel for the petitioner has raised a solitary contention before this Court claiming that the same has been passed in the absence of the accused as well as his counsel. Reliance has been placed upon *zimini* orders which shows that the presence of the appellant/accused was being tried to be procured through Non-bailable Warrants and has tried to explain the absence of the petitioner by relying upon pleadings raised in Para Nos.11 and 12 of the revision petition which read as under :

“11. That it is further important to mention here that after filing the appeal, the petitioner was released on bail vide order dated 17.03.2018 and thereafter, either the petitioner or his counsel Sh. Sushil Kapoor, Advocate were regularly appearing in his case/appeal till 11.04.2022. On 06.07.2022, the petitioner contacted his lower court counsel and requested him to move and application on 07.07.2022 for exemption of his personal appearance. Accordingly, the abovementioned counsel of the petitioner filed an application for the said purpose and the Ld. Appellate Court allowed the same and personal appearance of the petitioner was exempted for 07.07.2022. Thereafter, the petitioner called his counsel to confirm the next date of the appeal and the petitioner was told about the date i.e. 29.08.2022. On 27.08.2022, the petitioner again instructed his counsel to submit an application on 29.08.2022 for exemption of his personal appearance as he was suffering from viral. The abovementioned counsel for the petitioner assured him that the necessary application shall be filed on 29.08.2022. In the

evening of 29.08.2022, the petitioner called his counsel for getting status regarding next date of his case/appeal. The clerk of the aforementioned counsel, told the petitioner the necessary application was filed and the same has been allowed also. The petitioner was also apprised by the clerk of his abovesaid counsel that he is not required to appear in court in person as when his presence will be required, he will be intimated accordingly. Subsequently, the petitioner called his aforesaid counsel many times to confirm about the status of the case every time he was told that he shall be informed whenever his presence will be required. The petitioner under bonafide advice of his counsel accordingly waited for the reply of his counsel. It is also pertinent to mention here that the petitioner never received any notice or summons in this case after filling the appeal. A copy of order dated 07.07.2022 is being appended hereto as **Annexure P-1**.

12. That, recently in the first week of June, 2023, the local police visited the house of the petitioner in his absence and asked his whereabouts from his family members and when the petitioner came to know about this, he inquired regarding and called his counsel but, unfortunately, the petitioner has not been given any satisfactory reply and he was told by his counsel that "I do not know what happened in your appeal because I had not appeared as you have not cleared your dues.". Ultimately, the petitioner inquired through the undersigned counsel and only then he came to know that his appeal has been dismissed on 06.01.2023 in his absence."

5. Further reliance has been placed upon law laid down in the case of **Shankar vs. State of Maharashtra, 2019(3) RCR(Criminal) 948** and that laid down in **Subedar vs. State of Uttar Pradesh, 2021(1) AICLR 2018** to submit that once the appellant and his counsel were not

found to be present it was the duty of the Appellate Court either to appoint an amicus or to nominate a counsel through Legal Services Authority and hear the matter on merits and then dispose off the appeal.

6. I have heard counsel for the petitioner and have gone through records of the case.

7. The plea being raised by counsel for the petitioner is against the record. Bare perusal of the judgment passed by Trial Court shall reveal that it was not only passed in presence of his counsel but also shows that each and every contention raised by his counsel has been noticed and dealt with by the Appellate Court. Thus the petitioner cannot be allowed to rely upon the law laid down by Apex Court in the case of **Shankar vs. State of Maharashtra** (supra). Once the petitioner who was being represented through his able counsel who was engaged by him only, process of law cannot be allowed to be defeated and made hostage to a ploy deployed by the accused who deliberately absents himself at the stage of final arguments in the appeal. Resultantly, the contention raised by counsel for the appellant is rejected.

8. So far as the present revision petition is concerned, this Court cannot be oblivious of the fact that the revisional jurisdiction of the High Court under Section 401 of the Code of Criminal Procedure is limited and the same can be invoked only where there is an error of law on the part of the Trial Judge. Finding it that the Courts below arrived on assessment of

the evidence and the concurrent finding of the fact that the petitioner admitted his signatures on the cheque leaf, the cheque was dishonoured for 'insufficient funds', the complaint was filed well within a period of limitation after the petitioner failed to respond to the statutory notice and there being nothing on record to show that the aforesaid findings recorded by the Courts below are in any way punctuated by cloud of doubt, this Court finds that it is not a fit case to exercise revisional jurisdiction.

9. Consequently, the present criminal revision petition is dismissed.

July 14, 2023
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No