

CRM-A-22-2023 (O&amp;M)

249

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

CRM-A-22-2023 (O&amp;M)

Date of decision: August 02, 2023

M/s Mahindra Hire Purchase (Regd.)

....Applicant

versus

Ajay Kumar

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** Mr. Vijay Lath, Advocate for applicant.

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**ARUN MONGA, J. (ORAL)****CRM-797-2023**

For the reasons stated in application, same is allowed subject to all just exceptions.

**Main case (O&M)**

Present application has been filed under Section 378 (4) of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') for grant of leave to appeal against judgment dated 17.12.2019 passed by Judicial Magistrate First Class, Jalandhar whereby complaint filed by applicant against respondent-accused for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act'), was dismissed acquitting the respondent-accused and bail bonds and surety bonds furnished by him were discharged.

2. Succinct facts of the present case are that accused took financial assistance from the complainant and also issued a receipt. In order to discharge the liability, accused issued a cheque for an amount of Rs.85,000/- in favour of the complainant. When the said cheque was presented before the Bank, the same was dishonoured with remarks "Opening Balance Insufficient". Complainant served legal notice and even after that, complainant failed to remit payment of the cheque.

3. Learned counsel for the applicant would contend that vide order dated 05.10.2015 (Annexure A-2), learned Court below ordered the file to be consigned to the

**CRM-A-22-2023 (O&M)**

record room with the directions to revive it back as and when accused/ proclaimed person is arrested, appear or surrender before the Court. He further submits that after appearance of the accused-respondent, the appellant-complainant was summoned vide order dated 12.06.2019 (Annexure A-3) according to which the complainant was required to appear on 03.07.2019, the report on the back of the summons shows that the service of the complainant was not effected as the office of the complainant was locked.

3.1. He further submits that thereafter summons dated 03.08.2019 (Annexure A-4) was issued in which the appellant-complainant was required to appear on 02.09.2019, On this summon also, the report shows that service of the petitioner could not be effected. Interim order dated 02.09.2019 (Annexure A-5) shows that on 02.09.2019, the presence of Sh. Vikas Sood, Advocate was marked on behalf of the complainant, but nothing was mentioned regarding service of the complainant, thereafter the case was shown to be adjourned to 11.10.2019. Further contends that interim order dated 11.10.2019 (Annexure A-6) shows that presence of Sh. Vikas Sood, Advocate was again marked for the complainant and thereafter case was adjourned to 13.11.2019.

3.2. Learned counsel further urges that order dated 13.11.2019 (Annexure A-7) shows that none for complainant was appeared. Thereafter, the case was adjourned to 05.12.2019, on which date also none appeared for the complainant. On 05.12.2019 the case was further adjourned to 17.12.2019. Vide impugned order dated 17.12.2019, it was mentioned that since none appeared for the complainant, so the accused was ordered to be acquitted and the complaint was dismissed under the provisions of Section 256 of Cr. P.C. Learned counsel further contends that complainant was continuously pursuing his complaint from the date of presentation i.e., 29.01.2023 to 05.10.2015 when accused was declared a proclaimed person.

4. I have heard learned counsel for the applicant and perused the case file.

5. There is a delay of 1027 days in filing application seeking leave to appeal.

5.1. Following order dated 05.10.2015 was passed by learned JMIC, Jalandhar:

*“Accused has not come present. Statutory period of 30 days have already been expired as publication has already been effected. So, the accused Ajay Kumar son of Sudershan Kumar R/o WG 393, Near Suraj*

## CRM-A-22-2023 (O&amp;M)

*Ganj, Jalandhar is ordered to. be declared absconded from law as per amended provisions of Section 82 Cr.P.C. Necessary intimation be sent to the concerned police station. SHO, New Baradari, Jalandhar is directed to register the FIR against the accused under the relevant provisions of law. One copy of this order be sent to SHO, New Baradari, Jalandhar for compliance. Since complainant has not provided any list of property of the accused, therefore, there is no justification to proceed with the case Us 83 Cr.P.C.*

*The counsel for the complainant stated at bar that he does not want lead any evidence on behalf of the complainant U/s 299 Cr.P.C. and that he has no objection if the present complaint is consigned after declaring the accused as proclaimed offender. So, the file is ordered to be consigned to the record room with the directions to revive it back as and when accused/proclaimed person is arrested, appear or surrender before the court.”*

6. Having heard learned counsel for the applicant, I find no grounds to interfere in the light of specific order dated 05.10.2015 *ibid* where on the statement of complainant itself, complaint was consigned to record room with directions to continue with the proceedings under Section 83 of Cr. P.C. for securing presence of accused. Liberty was granted to the complainant to revive the case as and when accused/proclaimed person would be arrested or he would have appeared on his own volition before the Court below. Needless to say that complainant throughout remained conscious and aware that it is only the complaint that was consigned to the record room, but proceedings under Section 83 of Cr. P.C. were continuing before the Court at the instance of the complainant. The complainant having itself not bothered to await the proceedings subsequent to the consigning of the complaint, cannot turn around and put blame on the Court that once accused caused appearance, the complainant ought to have been served afresh. No doubt, learned trial Court did make an endeavour despite that to serve complainant and since complainant had shifted from the address, no effective service could be caused despite making attempts to trace its new address. It appears that after having slumbered over the matter for more than 3 years when it realized that accused has caused appearance, but the complainant committed default in pursuing proceedings, however, an application was filed for restoration of the complaint which was also dismissed for non-prosecution. Conduct of the complainant, as is borne out, was deficient on his own part and no blame can be put on the Court process.

**CRM-A-22-2023 (O&M)**

7. In the premise, no grounds to condone the delay of 1027 days in filing application seeking leave to appeal are made out.

8. Even on merits, applicant has no case at all. Impugned order dated 17.12.2019 acquitting respondent-accused of the notice of accusation is, *inter alia*, premised on the following reasoning:

*“Present:- None for the complainant.  
Sh. Bikram Singh, Advocate for the accused.*

*Case called several times since morning, but none has come present on behalf of complainant. It is already 12.00 PM. Case be called after lunch.*

*Bhupinder Mittal,  
JMIC/17.12.2019*

*Present:- None for the complainant.  
Sh. Bikram Singh, Advocate for the accused.*

*Case called repeatedly after lunch but none has appeared on behalf of complainant. It is already 3:00 P.M. Case be called up again, at 4:00 PM awaiting complainant as presence of complainant is necessary to proceed with case.*

*Bhupinder Mittal,  
JMIC/17.12.2019*

*Present:- None for the complainant.  
Sh. Bikram Singh, Advocate for the accused.*

*File taken up after lunch session. Perusal of the file shows that today the case was fixed for appearance of the complainant but despite calling the case number of times none appeared on behalf of the complainant.*

*Before proceeding further Section 256 of Cr.P.C. is required to be discussed which says that "On the date, of which hearing is adjourned, the complainant does not appear, the Magistrate shall acquit the accused unless for some reasons he thinks it proper to adjourn the case"*

*In the present case, it seems that complainant is not interested to pursue with the present complaint. Moreover, from the facts and circumstances of present case, it is not prudent to further adjourn the case anymore. Therefore, the complaint stands dismissed U/s 256 Cr.P.C against accused who stands acquitted and the bail bonds and surety bonds furnished by him stand discharged. File be consigned to the Record Room.*

*Pronounced in open Court  
Dated: 17.12.2019*

*Bhupinder Mittal, PCS  
Judicial Magistrate First Class  
Jalandhar (UID-PB0381)"*

9. Perusal of the aforesaid shows that the impugned order is based on cogent reasoning after appreciating the evidence on record in right perspective.

## CRM-A-22-2023 (O&amp;M)

10. It is a settled law as has been held in **C. Antony Vs. K.G. Raghavan Nair**<sup>1</sup>, that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused unless the judgment suffers from any perversity. In the cases of acquittal, there is double presumption in their favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

11. In **Anil Kumar Gupta vs. State of U.P.**<sup>2</sup>, it was held as under:-

*“This Court held that "the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere an order of acquittal unless it comes to the conclusion that the approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only- reappraise the evidence to arrive at its own conclusions.*

*(emphasis supplied)*

11. This Court following the decision in **Ramesh Babulal Doshi**, further observed that 'there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappraising the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice.”

12. In the instant case, order impugned does not suffer from any infirmity and perversity much less illegality. Thus, no grounds for interference are made out.

13. Instant application seeking leave to appeal is hereby dismissed on the ground of delay as well as on merit.

<sup>1</sup> 2002(4) RCR (Criminal) 750 SC

<sup>2</sup> 2001(2) RCR(Criminal) 292 SC

CRM-A-22-2023 (O&M)

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)  
JUDGE

August 02, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No