

**CRR-32-2024****-1-****113 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****CRR-32-2024****Date of decision: 24th July, 2024**

Prithvi Nath Sharma

...Petitioner(s)

Versus

Sat Parkash

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. D.S. Matya, Advocate for the petitioner.

MANISHA BATRA, J (ORAL):-

The challenge in this revision petition has been made to the judgment dated 06.09.2017 passed by the Court of Learned Judicial Magistrate Ist Class, Gurugram in criminal complaint No. 1860 of 2014 titled as 'Sat Parkash Vs. Prithvi Nath Sharma' filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') whereby the present petitioner had been held guilty and convicted as well as to the judgment dated 19.12.2023 passed by learned Additional Sessions Judge, Gurugram thereby affirming the judgment of learned trial Court.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned complaint had been filed by the present respondent on the allegations that the present petitioner had taken a friendly loan of a sum of Rs. 5,00,000/- from him in August, 2013. To



discharge his liability, the petitioner had issued a cheque for the abovesaid sum in favour of the respondent on assurance that the same would be honoured upon its presentation. The respondent had presented the said cheque for realization but the same had been dishonoured with the remarks 'funds insufficient'. Despite issuance and receipt of a statutory notice, the petitioner failed to make payment of the amount of cheque and hence the aforementioned complaint had been filed.

3. On presentation of the complaint, preliminary evidence was recorded by the respondent or vide order dated 21.07.2014, the process was issued against the petitioner. He appeared in response to the notice. Notice of accusation under Section 138 of the Act was served upon him on 03.11.2014. The respondent produced oral as well as documentary evidence in support of his claim and thereafter, closed the same. The statement of the petitioner-accused was recorded under Section 313 of Cr.P.C. wherein he abjured his guilt and claimed to be innocent. In defence evidence, he examined one witness.

4. On considering the evidence produced on record as well as the contentions raised by both sides, the learned Judicial Magistrate held the petitioner guilty for commission of offence punishable under Section 138 of Act and he was sentenced to undergo simple imprisonment for a period of one year and simultaneously to pay fine of Rs. 70,00,000/- to the respondent-complainant.

5. Feeling aggrieved from the said order, the petitioner had filed



an appeal before the Court of learned Additional Sessions Judge, Gurugram. The sentence of the petitioner had been suspended in that appeal. Subsequently, he absented himself. His bail was cancelled. He was declared a proclaimed person/absconder vide order dated 09.12.2019 and vide judgment dated 19.12.2023, the appeal was dismissed.

6. As mentioned above, though the petition has been filed challenging the judgments of the trial Magistrate as well as the Appellate Court i.e. the Court of Additional Sessions Judge, however, at the very outset, learned counsel for the petitioner submitted that he wanted to restrict his argument only to the extent to which the judgment passed by the Learned Appellate Court is concerned. It is argued by him that the learned Appellate Court had decided the appeal against the petitioner in the absence of the his counsel as well as himself and on this very ground, the appeal was liable to be dismissed. It is submitted by him that a grave error had been committed by learned Appellate Court by deciding the appeal after declaring him as an absconder on account of his non-appearance. Even as on 13.08.2019, when bail was cancelled and bonds were forfeited to the State, an application along with medical prescription had been moved seeking exemption from personal appearance. It is argued that the fact that the petitioner could not appear either himself or through his counsel before the learned Appellate Court was not sufficient to decide the appeal against him. With these broad submissions, it is urged that the impugned judgment as passed by learned Appellate Court is liable to be set aside, the revision petition deserves to be



accepted.

7. The only question that requires consideration is as to whether the criminal appeal as filed by the petitioner against the judgment of his conviction and order of his sentence could be dismissed without hearing him and in the absence of his counsel as well as himself. Learned counsel for the petitioner has relied upon a case cited as ***Criminal Appeal No. 809 of 2021*** arising out of ***SLP (Criminal) No. 5690-2021*** titled as '***K. Muruganandam and Others. V. State rep. By the Deputy Superintendent of Police and another***', wherein it was observed by Hon'ble Supreme Court that if in an appeal filed against the judgment of conviction, the accused-appellant does not appear himself or through counsel appointed by him, the Court is obliged to proceed with the hearing of the case only after appointing an *amicus curiae*, but cannot dismiss the appeal, merely because of non-representation or absence of the accused. Reliance has also been placed upon a case cited as ***Criminal Appeal Nos. 34-35 of 1986*** arising out of ***SLP (Cri.) Nos. 1890-91 of 1985*** titled as '***Ram Naresh Yadav Vs. State of Bihar***', decided on 21.07.1986, wherein also the Hon'ble Supreme Court had observed that a challenge to the order of conviction can be disposed of on merits only after hearing the appellant or his counsel. The Court might appoint a counsel at State cost to argue on behalf of the appellant. Similar proposition of law was laid down by the Apex Court in '***Kishan Singh Vs. State of Madhya Pradesh, 1996(9) SCC 372***' and '***Bani Singh and others Vs. State of Uttar Pradesh***' AIR 1996, Supreme Court 2539.



8. In the instant case, it has been noticed that the petitioner had preferred an appeal against the judgment of his conviction as passed by the trial Court by filing an appeal before the Court of Additional Sessions Judge, Gurugram. He had mostly been moving applications for seeking exemption from appearance. On 13.08.2019 also similar application had been moved which was dismissed by the Appellate Court. Consequently, his bail was cancelled and bonds were forfeited to the State. Non-bailable warrants were issued against him and since his presence could not be secured even thereafter, therefore, proceedings under Section 82 of Cr.P.C. were initiated against him and he was declared an absconder on 09.12.2019. The said order was passed in the presence of his counsel and then the case was adjourned to 18.02.2020. However, thereafter, neither the petitioner nor his counsel appeared before the learned Appellate Court and ultimately, after hearing learned counsel for the respondent-complainant, learned Additional Sessions Judge i.e. Appellate Court dismissed the appeal filed by the petitioner. In view of ratio of law as laid down in the above discussed case, which has also been reiterated by High Court of Madhya Pradesh at Jabalpur by order dated 16.08.2022 passed in ***criminal case No. 39389 of 2022*** titled as '***Billa @ Sunil Kumar Vs. The State of Madhya Pradesh***' and High Court of Bombay at Aurangabad Bench in '***Fazal Khalil Ahemad Shaikh Vs. Nandkishor Ramnivasji Agrawal, 2020 (4) Bom.C.R(Cri.) 219***', I am of the considered opinion that the Appellate Court could not dismiss the appeal without hearing the appellant or his counsel or without appointing an *amicus*



curiae. Since that course had not been adopted by it, therefore, the impugned judgment is certainly not sustainable and is liable to be set aside. The same is accordingly set aside. The matter is remitted to the Appellate Court with a direction to restore the appeal to its original number, to give notice of the same to counsel for the respondent/respondent and then to hear the arguments after giving reasonable opportunity and decide the same afresh on merits. It is also made clear that since the petitioner has been declared as absconder in the appeal, the order passed by this Court shall be subject to the condition that he surrenders before the learned Appellate Court on or before 27.08.2024 and moves an application for grant of bail, which shall be decided by the learned appellate court as per law. If the petitioner does not surrender before the trial Court on or before the date fixed, then this petition shall be deemed to be dismissed.

9. Since the main petition has been allowed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

24th July, 2024

Parveen Sharma	1. Whether speaking/ reasoned	:	Yes / No
	2. Whether reportable	:	Yes / No