

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-A-611-2023  
DECIDED ON: 30.04.2024

M/S BALA SUNDRI TRADING COMPANY AND ANOTHER  
.....APPLICANTS/APPELLANTS

VERSUS

SANDEEP SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ravi Dutt Sharma, Advocate  
for the applicant/appellant.

SANDEEP MOUDGIL, J (ORAL)

The instant application has been preferred under Section 378(4) Cr.P.C. seeking grant of leave to appeal against the judgment of acquittal dated 02.11.2022 passed by the Judicial Magistrate Ist Class, Pehowa.

The aforesaid judgment under appeal has arisen out of complaint under Section 138 of Negotiable Instruments Act, 1881 preferred by the applicant-complainant wherein the preliminary evidence was recorded and accused was ordered to be summoned on 01.11.2018 but he was evading the service and finally the proclamation was issued which was received back duly effected but despite such service, the accused failed to appear after recording of the executing police officer on 06.07.2022, the case was deferred to 12.08.2022 by the trial Court for presence of accused. It is asserted on behalf of the appellant-complainant that the case file was taken up on 12.08.2022 though the trial Court was not being held as the presiding officer was on leave from 08.08.2022 to 12.08.2022. Finally the accused

appeared on 03.09.2022 before the trial Court who was released on bail and the proceedings were deferred to 12.10.2022 for cross-examination of the complainant after recording of examination-in-chief. The accused moved an application seeking exemption on 12.10.2022 and complainant was also not present on that day due to certain unavoidable reason as has been pressed on his behalf by Sh. Ravi Dutt Sharma, Advocate and a notice was issued to the complainant through his counsel for 02.11.2022. Though the said notice was not brought to the knowledge of applicant-complainant and being ignorant of the date before the trial Court, he did not appear, however, on that day itself the complaint was dismissed for non-prosecution.

It is in this backdrop of events, the instant appeal came to be filed before this Court.

Having heard learned counsel for the applicant, I am of the considered view that earlier reasonable time was consumed to obtain the presence of accused-respondent since the date of initiation of complaint i.e. 29.10.2018 till 03.09.2022 almost four years and on one occasion when the complainant failed to appear for certain unavoidable reasons and could not even inform his counsel under a mistaken belief of having no knowledge of the date of proceedings on 12.10.2022 as well as 02.11.2022 which was neither intentional nor deliberate. It is specific stand of the learned counsel for the applicant-complainant that due to miscommunication between his counsel appearing before the trial Court, he could not put in appearance as he is conducting his business merely at a distance of 100 mts from judicial complex, Pehowa in the name and style of Bala Sundri. Citing the said reason, he asserts on his *bona fide* that there is no reason otherwise for any

deliberate or intentional absence from the trial since he himself is the complainant and was eager to get the same adjudicated at the earliest.

A perusal of the case file would depict that the applicant-complainant had been pursuing his complaint continuously without any faith for more than 25 dates by his appearance in person and on an isolated instance he became absent.

In the light of these aforesaid facts and circumstances and having gone through the order impugned before this Court dated 02.11.2022 without recording the opportunities and the details to examine the conduct of complainant it has observed that such absence tantamounts to wastage of precious time of the Court apart from burdening the State exchequer. Such an observation is totally unwarranted in the light of the fact that almost 3 years were consumed in effecting service upon an accused whereas it is only on an isolated instance after attending the Court for consecutively 25 days without any default the applicant-complainant absented and such instance cannot be termed to be deliberate and intentional and on his one absence the trial Court cannot come to the conclusion that complainant is wasting precious time of the Court and is also burdening the State exchequer without analyzing the order sheets of the case file.

Apart from the above, it is the accused as well who was not present on that date who has moved an application for exemption which ought to have been taken more seriously by the Court who earlier also made accused to appear in the trial Court after exercising the procedure given under Section 82 Cr.P.C. after a long delay of 3 years from the date of the institution of the complaint for which even the complainant has suffered,

who has approached the Court seeking justice. This Court cannot ignore the fact on account of procedural delays at the same time the complainant has also suffered on account of the judicial principle that “Justice delayed is justice denied”.

In the light of the aforesaid discussion and the case law referred hereinabove, the order dated 02.11.2022 passed by Judicial Magistrate Ist Class, Pehowa is not sustainable in the eyes of law and the same is hereby set aside.

The complaint is remanded back to Judicial Magistrate Ist Class, Pehowa for taking decision afresh on merits after providing ample opportunities as per law to lead evidence to all the parties to the *lis*.

The instant petition stands disposed off in the aforesaid terms.

30.04.2024  
*Poonam Negi*

(SANDEEP MOUDGIL)  
JUDGE

|                                  |               |
|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |