

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRR-119-2024 (O&M)
Date of Decision:-23.01.2024

Rajni Dhingra ... Petitioner

Versus

Sanjeev Chugh ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Bhupinder Ghai, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner assails judgment dated 2.1.2024 passed by learned Additional Sessions Judge, Gurugram vide which an appeal filed by the petitioner so as to challenge judgment dated 8.4.2022 passed by learned Judicial Magistrate 1st Class, Gurugram convicting the petitioner for having committed offence under Section 138 of Negotiable Instruments Act, has been dismissed.
2. Learned counsel for the petitioner submitted that the petitioner, as a matter of fact, had been regularly appearing during the course of appeal. However, on account of the petitioner having received an injury leading to fracture of her ankle, the petitioner moved an application on 2.1.2024 before the Court concerned seeking exemption from personal appearance, which was accompanied by the medical certificate as well as the X-ray report & photocopy of the X-ray films, but the Trial Court did not exempt her

presence while simply observing that the application is not supported by any prescription and only X-ray report report is produced.

3. Learned counsel for the petitioner submitted that the petitioner is a lady aged about 65 years and on the date fixed before the Lower Appellate Court i.e. 2.1.2024 even her counsel counsel was not present, who had gone abroad, and only proxy counsel was present, but the Lower Appellate Court proceeded to hurriedly dispose of the appeal. Learned counsel submitted that the petitioner, in order to prove her *bona fides*, is willing to deposit 50% of the cheque amount i.e. an amount of Rs.50 lakhs including the amount of Rs.15 lakhs already deposited. It has been submitted that while an amount of Rs.5 lakhs may be given to the complainant in compliance of the earlier directions to deposit 20% of the cheque amount, the remaining amount may be kept intact till the decision of the appeal.
4. Notice of motion.
5. At this stage, Aditya Jain, Advocate, has put in apperance on behalf of the respondent/complainant and has filed memorandum of apperance, which is taken on record. He also accepts notice on behalf of the respondent.
6. Learned counsel representing the respondent/complainant has, however, opposed the petition on the ground that the petitioner has not been appearing before the Court concerned and has been frequently seeking exemptions, which would show her non-cooperative conduct.
7. This Court has considered the rival submissions addressed before this Court.
8. This Court indeed finds that the medical record annexed with the exemption application would show that the petitioner had suffered a fracture on her

ankle. The petitioner being a lady aged about 65 years, it would have indeed been difficult for her to move about particularly in the harsh winter season. Her absence, as such, can be said to be due to unavoidable reasons. This Court is of the opinion that the Trial Court ought to have taken a lenient view so as to exempt her persence on the given day. This Court further finds that even the counsel representing the petitioner was not present and it is only a proxy counsel, who was present but the Trial Court, however, hurriedly proceeded to dispose of the appeal though the counsel, who would have prepared the case, was not present.

9. Since the petitioner has made a fair offer to deposit 50% of the cheque amount, a lenient view is warranted in the given circumstances. The petition, as such, is accepted. The impugned judgment dated 2.1.2024 passed by learned Additional Sessions Judge, Gurugram is hereby set aside. The matter is remanded back to the Court of learned Additional Sessions Judge, Gurugram, where the appeal was pending, with a direction to decide the matter afresh. The petitioner shall surrender before the Court concerned on 6.3.2024. However, the balance amount of Rs.35 lakhs as per offer made today shall be deposited before the Court concerned within 2 weeks from today. Out of said Rs.35 lakhs, an amount of Rs.5 lakhs shall be released to applicant to be adjusted against the 20% of cheque amount as had been directed to be paid by the Court of learned Additional Sessions Judge, Gurugram vide order dated 9.5.2022 (Annexure P-2). The remaining Rs.30 lakhs shall be kept intact by the Court of learned Additional Sessions Judge, Gurugram and shall be ordered to be released at the time of disposal of appeal. In case appeal is accepted, it shall be returned back to appellant. In

case, appeal is dismissed, the same shall be released in favour of complainant. It shall be open to Lower Appellate Court to consider furnishing of some surety at the time of release of such amount, if deemed appropriate.

23.01.2024

(Gurvinder Singh Gill)
Judge

Pankaj

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No