



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

259

CRM-M-3859-2023(O&M)
Date of decision : 10.09.2025

Dharam Pal

.....Petitioner

Versus

Neeraj Goel

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Shrey Goel, Advocate for the petitioner.

None for the respondent.

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for setting aside orders dated 21.07.2018 and 09.11.2022 passed by Judicial Magistrate, 1st Class, Ludhiana vide which the not only the complaint of the petitioner titled as 'Dharampal vs. Neeraj Goel' was dismissed in default, but also his application for restoration thereof.
2. The facts emerging are that the complainant-petitioner had lent Rs.4,00,000 to the accused-respondent, who had issued a cheque no. 009617 dated 28.03.2018 for discharging his legal liability, which came to be dishonoured and returned unpaid with remarks, "Funds insufficient", necessitating the petitioner to file the complaint.
3. Learned counsel for the petitioner contends that due to the lapse on part of the counsel, the RC could not be filed within the stipulated period, resulting in dismissal of the complaint under Section 204(4) CrPC for want of it. The complainant-petitioner, being under bonafide belief that needful would have



been done by his learned counsel, did not appear. The restoration of the same was sought, however that too came to be dismissed, causing grave prejudice to him.

4. Heard.

5. As per office report, the notice issued to the respondent, was received back with refusal to accept the same, thus proceeded against ex-parte.

6. It would be apposite to refer to the impugned order dated 21.07.2018, which reads thus:

“Today the case was fixed for filing RC for the service of the accused. As per report of Ahlmad, RC not filed by the complainant. Hence, I am of the considered view that complainant is not interested in contesting the present complaint. Accordingly, no further adjournment is justified and present complaint is dismissed in default u/s 204(4) Cr.P.C, for want of filing of RC for the service of the accused. File be consigned to the record room after due compliance.”

7. Evidently, the summons were issued on 11.05.2018 subject to filing of process fee, RC and copy of complaint, for 21.07.2018, on which date, the impugned order came to be passed, though in the interest of justice, an opportunity to the complainant could have been granted for the said purpose, particularly in view of the fact that for the lapse on part of his learned counsel, he ought not to have been penalised, as held in **Shaikh Mukthar and another vs. State of Andhra Pradesh**, (2020) 19 SCC 178.

8. Hon’ble the Supreme Court in **Rafiq vs. Munshilal and another**, AIR 1981 SC 1400, had held that, “What is the fault of the party who having done everything in his power expected of him, would because of his advocate... The problem that agitates us is whether it is proper that a party should suffer for the inaction, deliberate omission, or misdemeanour of his agent... We cannot be a party to an innocent party suffering injustice merely because of his chosen advocate defaulted.”



9. Had the present matter been of dismissal of complaint in default at the time of appearance of the accused, post receipt of summons, it would have, in terms of provision of section 256 Cr.P.C., amounted to an acquittal, thereby rendering the remedy of appeal before the competent Court the appropriate course. However, the case at hand stands on an altogether different pedestal, it being one wherein no summons were ever issued, let alone served, as RC/process fee was not filed. Such being an eventuality, the order impugned passed under Section 204(4) of Cr.P.C. cannot by any stretch, be regarded as that of an acquittal, ergo not appealable under Section 378 of Cr.P.C.

10. On a cumulative consideration of the matter, the present petition is allowed. The impugned order, set aside and the complaint is ordered to be restored to its original number.

10.09.2025
M.Kamra

(AMAN CHAUDHARY)
JUDGE

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