2025:PHHC:023191

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRR-199-2024 (O&M)
DECIDED ON: 14.02.2025

SUNAINA CHAUHAN AND ANOTHER

.....PETITIONERS

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

AND

2. CRR-200-2024 (O&M)

SUNAINA CHAUHAN

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

3. CRR-208-2024 (O&M)

SUNAINA CHAUHAN

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

4. CRR-210-2024 (O&M)

SUNAINA CHAUHAN

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Abhishek Sanghi and Mr. Yugank Goyal, Advocates
for the petitioners.

Mr. Chetan Sharma, DAG Haryana

Mr. Vijay Kumar Jindal, Sr. Advocate with
Mr. Akshay Jindal, Mr. Abhishek Shukla and
Mr. Aditya Jain, Advocates for respondent No.2.

SANDEEP MOUDGIL, J

1. Vide this common order, I shall be disposing off the petitions together, as common question of law is involved in all the aforesaid petitions.

To avoid any repetition, the facts are being taken from CRR-199-2024, titled as ***"Sunaina Chauhan and Anr. vs. State of Haryana and Another".***

2. RELIEF SOUGHT

All the aforesaid revision petitions have been preferred against the impugned judgment dated 03.01.2024 passed by Additional Sessions Judge, whereby the appeal filed against the judgment of conviction dated 09.06.2023 and order of sentence dated 13.06.2023 passed by Judicial Magistrate 1st Class, Gurugram, has been dismissed. The petitioner has been sentenced to undergo for a period of one year and to pay a compensation to the complainant to the tune of cheque amount for commission of offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short Act of "1881").

3. ***FACTS***

The present Complaint has been filed by the Complainant, who states that the accused and her family have been well known to them for several years and have been in regular contact. In early March 2015, the accused, along with her husband, approached the Complainant and expressed their urgent need for Rs. 7.5 Crores for investment purposes, as well as for their business and personal requirements. The accused requested the Complainant to lend them the said amount. Trusting their words, the Complainant agreed to the request but informed the accused that he could only lend Rs. 2,07,00,000/-. Consequently, the accused borrowed Rs. 2,07,00,000/- from the Complainant in April and May 2015, with the understanding that it would be repaid with compounded monthly interest at the rate of 1.50%. The Complainant advanced the loan amount of Rs. 2,07,00,000/- to the accused in the following manner:

> *"(i) Rs. 55,00,000/- vide cheque no. 436898 dated 20.04.2015 drawn on Indian Overseas Bank.*
> *(ii) Rs. 42,00,000/- vide cheque no. 436902 dated 20.04.2015 drawn on Indian Overseas Bank.*
> *(iii) Rs. 43,00,000/- vide cheque no. 436912 dated 23.05.2015 drawn on Indian Overseas Bank.*
> *(iv) Rs. 57,00,000/- vide cheque no. 436913 dated 23.05.2015 drawn on Indian Overseas Bank.*
> *(v) Rs. 3,00,000/- vide cheque no. 436914 dated 23.05.2015 drawn on Indian Overseas Bank.*
> *(vi) Rs. 7,00,000/- vide cash on 14.05.2015."*

The aforementioned cheques were debited from the Complainant's bank account and credited to the bank account of the accused. However, the accused failed to make timely payments for the interest. When the Complainant requested the accused to settle the interest, the accused explained that she was facing a financial shortage but assured that the full loan amount, including interest, would be repaid by April 2018. The accused requested the Complainant to allow more time, and the Complainant agreed to her request.

To partially discharge the loan liability, the accused issued cheques in favor of the Complainant, with the following details: Nos. 649422, 649424, 649425, 649429, and 649430, all dated 10.04.2018, for amounts of Rs. 55,00,000/-, Rs. 42,00,000/-, Rs. 3,00,000/-, Rs. 1,00,00,000/-, and Rs. 50,00,000/-, respectively, drawn on Oriental Bank of Commerce, Panchkuian Road, New Delhi-110001. The Complainant deposited these cheques for collection with his bank, ICICI Bank, Sector-14, Gurugram.

However, the Complainant was shocked to discover that two of the cheques were dishonored and returned unpaid by the accused's bank, with the remark, "Kindly contact drawer/drawee bank and present again." The remaining three cheques were also dishonored by the accused's bank with the remark "Funds insufficient," as per separate bank memos dated 08.05.2018.

Following the dishonor of these cheques, the Complainant, through his Counsel, sent a legal notice on 15.05.2018 by registered A.D., demanding payment of the total dishonored cheque amounts, Rs. 2,50,00,000/-, within 15 days from the receipt of the notice. As the payment was not made, this complaint has been filed.

4. ***Submissions:-***

On behalf of the petitioners

The learned senior counsel for the petitioners has submitted that the petitioners were unaware of the proper legal procedures and inadvertently noted the incorrect date, which led to their failure to appear before the Appellate Court. Furthermore, the petitioners' counsel also failed to appear. Despite this, the Appellate Court proceeded with the case in their absence without appointing an *amicus curiae* to safeguard the petitioners' interests. This, counsel argued, constitutes a violation of the principles of natural justice, as both the petitioners and their counsel were not afforded an opportunity to be heard, and no notice was issued to them. Consequently, the counsel urged that the impugned judgment passed by the Additional Sessions Judge should be set aside on this basis alone.

Learned senior counsel for the petitioners has placed reliance upon judgment rendered by the Apex Court in "***K. Muruganandam and Others vs. State , 2021 (20) SCC 642",*** wherein it has been held that if the accused does not appear through counsel appointed by him, the Court is obliged to proceed with the hearing of the case only after appointing an *Amicus Curia*e, but cannot dismiss the appeal merely because of non-representation of default of the advocate for the accused.

<u>On behalf of the respondents/complainant</u>

The learned Senior counsel representing the respondent No. 2/complainant strongly contended that the Appellate Court correctly dismissed the appeal, emphasizing that the petitioners have a history of defrauding innocent individuals, such as the complainant. He further stated that the complainant has substantiated the charges against the accused through multiple documents, and as a result, the decisions made by the lower courts are entirely valid and legally sound. Additionally, he pointed out that the arguments in the case had already been heard by the Appellate Court, with the matter scheduled for judgment pronouncement on 03.01.2024, making the presence of the petitioners or their counsel irrelevant.

5. Heard learned Senior counsel appearing for the parties at length.

6. *ANALYSIS*

The Appellate Court has dismissed the appeal in the absence of the learned counsel for the appellant. One of the submissions made on behalf of respondent No.2/complainant is that the arguments had already been heard and the case was listed for pronouncement only. The said argument is of no use as from the perusal of orders of the Appellate Court, it is evident that the case was listed for remaining arguments. The order dated 06.12.2023 passed by the Appellate Court reads as under:-

> *"CNR No. HRGR-01-11040-2023 CIS No. CRA-420-2023*
>
> *Mrs. Sunaina Chauhan and Anr. vs. Mr. Sanjeev Chugh*
>
> *Present:- Appellant/convict not present represented by Shri Tejpal Singh, Advocate.*
>
> *Shri MK Dang, Advocate for respondent/complainant.*
>
> *The matter was fixed for remaining arguments in view of the order passed by Hon'ble Punjab and Haryana High Court, Chandigarh but the counsel for convict has moved an application for exemption and did not adduce remaining arguments. In the given circumstances, the court is bound to grant exemption as his lordship has been pleased to pass order wherein the appellate court has been restrained from taking coercive action. Therefore, the exemption filed on behalf of appellant/convict is allowed.*
>
> *Now to come up on 03.01.2024 for remaining arguments. Long date is given as the winter vacation is commencing shortly and cause list is heavier one due to older cases/action plan cases.*
>
> *(Mona Singh)*
> *ASJ, Gurugram*
> *UID No. HR-0232*
>
> *Date of order:06.12.2023*
> *Geetu"*

It is universally acknowledged that the right to be represented by a counsel is an essential part of the due process clause and is linked to the right guaranteed under Article 21 of the Constitution of India. If, for any reason, the advocate representing the accused is unavailable, the Court has the discretion to appoint an Amicus Curiae to assist in the matter. However, it is imperative that the cause is not left unrepresented.

In the case of "***Maneka Gandhi v. Union of India"; AIR 1978 SCC 597***, a Constitution Bench of the Supreme Court held that the procedure for depriving a person of their life or liberty must be fair, reasonable, and just.

The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of petition, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the Court to inquire as to what is happening in the Court with regard to his case nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. The problem that agitates is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative.

7. <u>Conclusion</u>

In light of the above discussions, all the revision petitions are hereby allowed and impugned judgment dated 03.01.2024 passed by Additional Sessions Judge, is set aside.

However, the case is remanded back to the Appellate Court to decide the appeal filed by the accused-convict, for afresh on its merits, in accordance with the law, after providing one final sufficient opportunity to the appellant(s).

This relief is contingent upon the payment of Rs. 1,00,000/- as costs to respondent No. 2/complainant.

Ordered accordingly.

All the pending criminal misc. application(s) shall also disposed of.

A copy of this order be placed on the files of other connected revision petitions.

(SANDEEP MOUDGIL)
JUDGE

14.02.2025
Sham

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*