



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**
235
CRM-A-2670-MA-2017 (O&M)
Date of decision: 14.07.2025
Kanhya Lal
.....Applicant
Versus
Sunder Singh
.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gaurav Singla, Advocate
for the applicant.

None for the respondent.

HARPREET SINGH BRAR J. (Oral)

CRM-40237-2017

The present application is preferred under Section 5 of Limitation Act, 1963 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter ‘Cr.P.C.’) seeking condonation of delay of 1495 days in filling the present leave to appeal.

For the reasons mentioned in the application, the delay of 1495 days in filing the present leave to appeal is hereby condoned.

CRM-A-2670-MA-2017

1. The present application has been filed under Section 378(4) Cr.P.C. against the following orders arising from criminal complaint under Sections 138, 142 of the Negotiable Instruments Act, 1881 read with Section 420 IPC:

ORDER	CONSEQUENCE
Order dated 24.08.2013 passed by learned Judicial Magistrate Ist	Complaint dismissed for non-prosecution

2025:PHHC:086669



Class, Palwal	
Order dated 01.08.2015 passed by learned Judicial Magistrate Ist Class, Palwal	Application for restoration of complaint dismissed
Order dated 09.08.2017 passed by learned Additional Sessions Judge, Palwal	Revision against order dated 01.08.2015 dismissed.

2. For the reasons stated in this application, the same is allowed. Leave to appeal granted.
3. Office is directed to assign an appeal number to the case.
4. The facts, in brief, are that in February, 2012, the respondent-accused, the owner of Royal-Tech Construction Co., borrowed a sum of Rs.9,50,000/- from the appellant-complainant for a period of 08 months. In order to discharge this liability, the respondent issued a cheque bearing No.528044 dated 19.11.2012 for Rs.9,50,000/- drawn on Bank of Baroda, to the appellant. On presentation for encashment, the same was dishonoured vide memo dated 29.11.2012 with the remarks- ‘funds insufficient.’ Thereafter a legal notice was served on the respondent. However, on his failure to repay the said amount in the stipulated time, complaint(supra) was filed.
5. Learned counsel for the appellant *inter alia* contends that the appellant had indeed reached the Court complex on 24.08.2013 however, due the courts were shifted to a new building. The appellant could only figure out where the new Court room was located by lunch when an order dismissing the complaint(supra) for non-prosecution had already been passed. The appellant approached the learned trial Court for restoration, however the same was dismissed vide order dated



01.08.2015. Further, a revision petition was preferred against the same, which was also dismissed vide order dated 09.08.2017. Learned counsel relies on the judgments rendered by this Court in ***Parmod Kumar vs. Vijay Kumar*** in CRM-M-44682-2017 decided on 19.04.202 and ***Kirpal Singh alias Gopi vs. State of Punjab*** in CRM-M-44610-2018 decided on 04.12.2018.

6. *Per contra* learned State counsel supports the orders passed by the learned Courts below as the complaint(supra) was dismissed for non-prosecution as the appellant had not turned up before the learned trial Court.

7. Having heard learned counsel for the appellant and after perusing the record with his able assistance, it transpires that nothing on the record indicates that the appellant intentionally absented himself before the learned trial Court. In fact, the appellant would have borne more damage for not appearing as a huge sum of his alleged money was at stake. The appellant has been able to explain that his non-appearance was caused due to change in Court buildings, which further negates *mala fide* of any kind.

8. Recently, a two Judge bench of the Hon'ble Supreme Court in ***Ranjit Sarkar vs. Ravi Ganesh Bharadwaj and others*** in Criminal Appeal No. 1593 of 2025 (Arising Out of SLP (Crl.) No. 205 of 2025) decided on 17.03.2025, categorically held that dismissal of a complaint would not mechanically result in acquittal. Speaking through Justice Dipankar Datta, opined as follows:



“18. Chapter XX of the Cr. PC is titled Trial Of Summons-Cases By Magistrates. It has 8 (eight) sections from Section 251 to 259. Section 254 lays down the procedure to be followed if conviction is not recorded in terms of Sections 252 and 253. An acquittal can be recorded by a magistrate under Section 255, Cr. PC, if considering the evidence, it is found that the accused is not guilty. An acquittal can also be recorded by the magistrate under Section 256, Cr. PC, without considering the evidence on record, in the stated situations. Section 256 of the Cr. PC reads as follows:

"256. Non-appearance or death of complainant-(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death".

19. What, therefore, assumes importance for invoking Section 256, Cr.PC is the purpose for which the case is fixed. If the date is not appointed for appearance of the accused but for some other purpose, like in the present case, acquittal of the accused does not necessarily follow as the logical result of absence of the complainant. Also, the words "on any day subsequent thereto" must be understood in reference to the words preceding, namely, "the day appointed for the appearance of the accused". Say, for instance, if a date is fixed by the magistrate for bringing an order from a superior court or for showing cause why an order of dismissal should not be passed for continuous absence of the complainant or for producing any material, which is not intrinsically connected with any step towards progress of the lis, and the complainant is found to be absent, a dismissal of the complaint can be ordered but the provision for acquitting the accused may not be attracted unless it happens to be the date appointed for appearance of the accused and they do appear



*personally or through an advocate; **also, without the magistrate recording a clear acquittal along with the order of dismissal of the complaint, acquittal need not be read into every such order of dismissal of a complaint owing to absence of the complainant.***” (emphasis added)

9. In view of the discussion above, it would be in the interest of justice to allow the present case to be decided on merits. Accordingly, the present petition is disposed of in the following terms:

- i. The impugned order dated 24.08.2013 passed by learned Judicial Magistrate Ist Class, Palwal, along with all subsequent proceedings arising therefrom, is set aside.
- ii. The complaint (*supra*) is ordered to be restored to its original number at the stage from where it was dismissed by the learned trial Court and the said Court is directed to proceed further strictly as per law, after giving notice to the parties concerned.
- iii. However, the above relief shall be subject to depositing a cost of Rs.5,000/- with District Legal Aid Services Authority, Palwal, for wasting the time of the Court.

10. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

14.07.2025
yakub

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