

2025:PHHC:049894



263 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-261-2024 (O&M)
DECIDED ON: 01.04.2025

BHAGAT SINGH

.....APPLICANT/APPELLANT

VERSUS

PAWAN KUMAR

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. PKS Phoolka, Advocate
for the applicant/appellant.

SANDEEP MOUDGIL, J

The application under Section 378(4) Cr.P.C. has been preferred by the applicant seeking leave to appeal against the judgment of acquittal dated 05.01.2024 passed learned Judicial Magistrate Ist Class, Bathinda.

In view of averments made in the present application, the same is allowed. Registry is directed to number it accordingly.

On oral request of learned counsel for the appellant the present appeal is listed for hearing today itself.

Main case

The present appeal has been preferred by the appellant against the judgment/order of acquittal dated 05.01.2024 passed by learned Judicial Magistrate Ist Class, Bathinda whereby, the respondent has been acquitted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881.

The trial Court has dismissed the complaint in the absence of the learned counsel for the complainant and the trial Court while dismissing the complaint has observed that in order to prove his case, the complainant failed to prove his claim by leading any evidence and the case of the complainant based on oral averments as such he is not entitled to relief as prayed for. Hence, the present complaint stands dismissed as case of no evidence.

Learned counsel for the appellant confines his prayer qua remanding the matter back to the trial Court since the complainant failed to conclude his evidence and the complaint was dismissed as case of no evidence.

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.

In view of the foregoing, discussion, it is held that the trial Court has adopted a very casual and pedantic approach while dismissing the complaint without appreciating that rules of procedure are handmade of administration of justice and the same are to be applied to enhance the cause of justice and not to defeat the same.

As a consequence the present case is disposed off and the case is remanded back to the trial Court for adjudicating it afresh on merits as per law after affording one reasonable opportunity to the complainant to lead his evidence and to cross-examine.

Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

01.04.2025

Sham

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