



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

CRM-A-765-MA-2015 (O&M)

Reserved on: 24.01.2025

Pronounced on: 31.01.2025

Naresh Kumari Uppal

...Applicant-Appellant

Versus

Mohinder Singh Sanghera

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Ms. Rakhi Sharma, Advocate
for the applicant-appellant.

Mr. Rajat Gaur, Advocate
for the respondent.

Harpreet Singh Brar, J. (Oral)

1. The present application is preferred under Section 378(4) of the Cr.P.C. against the order of acquittal dated 09.01.2015 passed by learned Judicial Magistrate Ist Class, Amritsar in criminal complaint bearing no. 26043/2011 dated 04.11.2011 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act').

2. Briefly, the facts, as alleged, are that the respondent borrowed some money from the applicant. In order to repay the same, he issued a cheque bearing No.430331 dated 15.04.2011 for Rs.10,00,000/- in her favour. However, on presentation for encashment, the same was dishonoured vide memo dated 25.08.2011 with the remarks 'funds insufficient.' Accordingly, a legal notice dated 16.09.2011 was issued. Since the respondent failed to make the requisite payment in the stipulated time, the complaint (supra) was filed.



3. Learned counsel for the applicant *inter alia* submits that the learned Court below has fallen into grave error by acquitting the respondent merely because the applicant did not turn up for cross-examination of CW. The husband of the applicant, namely Ashwani Kumar Uppal, is the power of attorney holder for the applicant and used to appear before the learned trial Court on her behalf. He is a 55 year old man suffering from alcoholism, to the extent that he has developed a liver disease. He has also been admitted to de-addiction centre previously. Because of his ailment, he had sought exemption from personal appearance on various occasions earlier as well. The absence of Ashwani Kumar Uppal on 09.01.2015 was neither deliberate nor intentional. Reliance in this regard is placed on the judgment rendered by the Hon'ble Supreme Court in ***M/s BLS Infrastructure Limited vs. M/s Rajwant Singh and others (2023) 4 SCC 326*** and the Bombay High Court in ***M/s Sonam Fianance Lease Co. Pvt. Ltd. vs. Vasant Singh Shankar Narayansingh and another 2008(5) R.C.R.(Criminal) 443.***

4. *Per contra* learned counsel for the respondent contends that the absence of the applicant cannot be overlooked as it is a dilatory tactic aimed at harassing the respondent-accused, who is a British citizen. The respondent has had to travel at least 50 times in the last 10 years since complaint (supra) was instituted. The applicant and her husband are habitual offenders with multiple FIRs registered against them. Ample opportunities were bestowed on the applicant and her husband by the learned trial Court, but for reasons best known to them, they have failed to put in appearance. Reliance in this regard is placed on ***S.P. Chengalvaraya Naidu vs. Jagannath AIR 1994 SC 853, G.S.***



Lamba vs. Union of India AIR 1985 SC 1019 and Bharatiya Seva Samajh Trust vs. Yogeshbhai Ambalal Patel AIR 2012 SC 3285.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it appears that the complaint (supra) was instituted on 04.11.2011 i.e. about 14 years ago. A perusal of the impugned order indicates that the power of attorney holder of the applicant- i.e. her husband namely Ashwani Kumar Uppal had a solitary absence on 09.01.2015, resulting in acquittal of the respondent. The husband of the petitioner had also sought exemption from personal appearance on various occasions in the past due to his liver disease and de-addiction treatment from alcohol. The trial has already reached the stage of cross-examination and prematurely ending the same would not only diminish all the time and effort put towards the matter but also defeat the interest of justice. Further, a two Judge bench of the Hon'ble Supreme Court in ***Mohd. Azeem vs. A. Venkatesh and another (2002) 7 SCC 726*** has made the following observations:

“4. In our opinion, the learned Magistrate and the High Court have adopted a very strict and unjust attitude resulting in failure of justice. In our opinion, the learned Magistrate committed an error in acquitting the accused only for absence of the complainant on one day and refusing to restore the complaint when sufficient cause for the absence was shown by the complainant.”

6. The complaint in the present case was filed in the year 2011 and the witnesses have already deposed, since the trial is at the stage of cross-examination. Especially in these circumstances, the Courts are required to adopt pragmatic and practical approach and allow the trial to be concluded. A hyper-technical approach would defeat the intention behind the statute, which



is to provide swift relief. Furthermore, this Court is of the considered opinion that, as far as possible, efforts must be made to ensure that the parties involved are allowed to present the best available evidence as that would lend credibility to the judicial proceedings. Denial of an opportunity, to present the best available evidence or have an effective and substantial hearing, is in direct violation of the right to free and fair trial enshrined under Article 21 of the Constitution of India as well as the principles of natural justice.

7. Accordingly, in the interest of justice, impugned order dated 09.01.2015 passed by learned Judicial Magistrate Ist Class, Amritsar is set aside and the present application is disposed of with the following directions:

- (i) The matter is remanded back to the learned trial Court and the complaint case is ordered to be restored to the same stage, under the same number.
- (ii) Further, the applicant be given two effective opportunities to complete cross-examination.

8. However, in view of the fact that the respondent is a British citizen and that he has been facing the agony of trial for about 13 years now, his personal appearance shall remain exempted in view of the ratio laid down by this Court in *Suresh Kumar and another vs. The State of Haryana and another* 2023 (4) R.C.R.(Criminal) 304, subject to the following conditions:

The respondent shall:

- (a) be represented through his counsel;
- (b) not delay/stall the proceedings;
- (c) not dispute his identity;
- (d) have no objection if the prosecution evidence is recorded in his absence but in the presence of his counsel;
- (e) appear before the Court as and when required; and

(f) abide by any other condition, which the Court below may impose.

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

Reserved on : 24.01.2025
Pronounced on : 31.01.2025
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(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No