



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

275

CRM-M-40596-2015 (O&amp;M)

Date of decision: 09.09.2025

State Bank of India

....Petitioner

**Versus**

Kush Prints Pvt. Ltd and Others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

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Present : Ms. Vardani Gupta, Amicus Curiae for the petitioner

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**AMAN CHAUDHARY. J.**

1. The present petition filed under Section 482 of the Code of Criminal Procedure is for setting aside order dated 19.01.2015, passed by Judicial Magistrate, 1st Class, Gurgaon, vide which complaint of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act'), against the respondent was ordered to be dismissed in default for want of prosecution.

2. As it emerges from the factual matrix, the accused-respondent had issued a cheque amounting to Rs.42,37,000/- in favour of the compliant-petitioner, to discharge their legal debt, which on presentation got dishonoured, due to 'insufficient funds'. A complaint under Section 138 NI Act was filed, wherein summoning was passed, but due to absence of the complainant-petitioner as well as his counsel, the said complaint came to be dismissed in default for want of prosecution vide order dated 19.01.2015.

3. Learned counsel for the petitioner submits that the summoning order



has been issued but the accused failed to put in appearance, while challenging the same by way of CRM-M-15093-2010, which came to be dismissed by this Court on 07.07.2014 (Annexure P3), on finding no merit in the petition. She contends that during this period the proceedings before the trial court remained pending and were being adjourned from time to time. The non-appearance of the counsel was neither intentional nor willful. He did not have anything to gain by not appearing or delaying the proceedings, which as a matter of fact, had already been pending since 2007.

4. It would be apposite to make a reference to Section 256 CrPC, which reads thus:

**“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.”

5. As is evident from the foregoing provision, it applies only after summons have been issued to the accused, i.e. at the post-summoning stage. A wide discretion has been conferred on the Magistrate to either proceed with the case despite the absence of the complainant, if represented by a pleader or by officer conducting the prosecution, or adjourn the matter on valid grounds. However, if the complaint is dismissed for default at such a stage, the inevitable



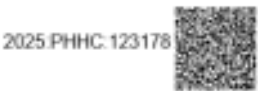
result is the acquittal of the accused.

6. In **V.K. Bhat vs. G. Ravi Kishore**, (2016) 13 SCC 243, Hon'ble the Supreme Court while considering the question as to whether in a case where the complaint was dismissed, the same tantamounts to acquittal and in such a situation whether a revision under Section 397(3) CrPC or appeal under Section 378(4) CrPC would lie, held that, "After hearing the learned counsel for the parties, we find that there is some force in the submissions made by learned counsel appearing for the appellant and we hold, in the facts of the case, that dismissal of the complaint for non-prosecution of the complainant amounts to acquittal as contemplated in section 256 of the Code of Criminal Procedure, 1973."

7. There is a clear distinction drawn as regards the dismissal of complaints for non-prosecution prior to the order of summoning and thereafter. As a natural corollary of operation of Section 256 CrPC to challenge an order dismissing a complaint post the issuance of summoning order, only appeal against acquittal would be maintainable.

8. Hon'ble the Supreme Court in **M/s Celestium Financial vs. A. Gnanasekaran Etc.**, 2025 SCC OnLine 1320, held that an appeal is maintainable under the proviso of Section 372 Cr.P.C. (corresponding Section 413 of BNSS, 2023) against an order of acquittal passed in a complaint under Section 138 NI Act, by treating the complainant therein, as a 'victim' within the meaning under Section 2 (wa) of Cr.P.C.

9. Considering the facts of the case in view of the judgments referred to hereinabove, the present petition is disposed of with liberty to the complainant-petitioner to avail of the appropriate remedy by filing an appeal.



Needless to mention that the delay may not come in his way, he having pursued the present petition before this Court ever since 2015.

(AMAN CHAUDHARY)  
JUDGE

09.09.2025  
M.Kamra

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