

2025:PHHC:061951



**245 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-A-889-2022 (O&M)
DECIDED ON: 08.05.2025**

M/S AEROCON DECON

.....APPLICANT/APPELLANT

VERSUS

M/S ANAND BOARD

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Surender Saini, Advocate
for the applicant/appellant.

SANDEEP MOUDGIL, J

CRM-45002-2022

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 60 days in filing the accompanying appeal.

For the reasons mentioned in the application, the same is allowed and delay of 60 days in filing the accompanying appeal is hereby condoned.

CRM-A-889-2022

1. The present application has been filed under Section 378 (4) of Cr.P.C. against the order dated 01.06.2022 passed by learned Judicial Magistrate Ist Class, Sonipat vide which a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred as NI Act) was dismissed for want of prosecution.

2. For the reasons stated in this application, the same is allowed.
Leave to appeal granted.

3. Registry is directed to assign an appeal number to the case.

4. The facts, in brief, are that the respondent-accused issued a cheque for an amount of Rs.3,80,000/-, in favour of the applicant/appellant, in order to discharge his legal liability. When the said cheque was presented to the concerned bank for encashment, the same was dishonoured and returned bearing remarks 'Funds Insufficient'. Thereupon, a legal notice was sent to the respondent. However, the requisite payment was not made in the stipulated time causing the appellant to file the complaint (*supra*).

5. Learned counsel for the appellant *inter alia* contends neither the appellant nor his counsel was present on the day the impugned order was passed. The learned trial Court only dismissed the complaint (*supra*) while observing that the complainant is deliberately avoiding to appear before the Court but the non-appearance of the applicant/appellant is on account of the fact that his father was admitted at hospital. He therefore, submits that the non-appearance of the appellant before the trial Court is neither intentional nor willful but on account of the aforesaid fact.

6. Heard.

7. The trial Court has dismissed the complaint in the absence of the learned counsel for the complainant. When the applicant became aware of the fact that his complaint had been dismissed in the absence of the advocate for the applicant and he was never intimated about the same by his counsel. Observing the fact that the Trial Court had failed to apply its *judicious* mind and has just casually dismissed the case for want of

prosecution by observing that the case was called for several times and nobody turned up, therefore, dismissed the complaint for want of prosecution, which is sufficient for this Court to infer that the Court below should have at least summoned the applicant and would have given a fair hearing so that either of the parties should not have suffered any prejudice and rather has adopted a very callous approach.

8. 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.

9. Recently, Hon'ble Division Bench of the Apex 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)

10. In view of the discussion above, this Court finds force in the arguments made by the learned counsel for the appellant. Accordingly, the present petition is disposed of in the following terms:

- (i) The impugned order dated 01.06.2022 passed by learned Judicial Magistrate Ist Class, Sonipat, is set aside.
- (ii) The learned trial Court is directed to decide the complaint afresh after affording due opportunities to the parties.
- (iii) 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.

(SANDEEP MOUDGIL)
JUDGE

08.05. 2025
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| (i) | Whether speaking/reasoned | : | Yes/No |
| (ii) | Whether reportable | : | Yes/No |