



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

230

CRM-A-3021-2019 (O & M)

Date of decision: 17.09.2025

M/S MADHYAM ESTATE LINKERS PVT LTD

...Applicant

Versus

M/S DHINGRA JARDINE INFRASTRUCTURE PVT LTD AND
OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rohit, Advocate for
Mr. Kunal Dawar, Advocate, for the applicant.

AMAN CHAUDHARY, J. (ORAL)

CRM-40986-2019

For the reasons mentioned in the application, the same is allowed and delay of 39 days in filing the application seeking leave to appeal is condoned.

CRM-A-3021-2019

1. The present application has been preferred under Section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking grant of leave to appeal against the order dated 09.09.2019 passed by learned Judicial Magistrate Ist Class, Faridabad, vide which the complaint under Sections 138/141 of the NI Act was ordered to be dismissed in default for want of prosecution.

2. As it emerges from the factual matrix, the accused-respondents had issued a cheque amounting to Rs.13 lakh in favour of the complainant-applicant, to discharge their legal debt, which on presentation got dishonoured, due to 'funds insufficient'. A complaint

under Sections 138/141 NI Act was filed, wherein summoning order was passed, but due to absence of the complainant-applicant as well as its counsel, the said complaint came to be dismissed in default for want of prosecution vide order dated 09.09.2019.

3. Learned counsel submits that the accused were summoned to face the trial; the complainant was regularly appearing before the trial Court, but on 09.09.2019, following which the complaint came to be dismissed in default. The absence was neither wilful nor deliberate, rather the same was on account of having noted down the wrong date. The applicant did not have anything to gain by not appearing or delaying the proceedings, which as a matter of fact, had already been pending since 2017.

4. It would be apposite to make a reference to Section 256 Cr.P.C., 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. 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, in view

of which, the present appeal is disposed of by directing the concerned Sessions Judge, for treating it to have been filed under Section 372 of Cr.P.C. and assigning the same to the Court concerned for deciding it.

8. Registry is directed to send the complete paper-book and trial Court record, if received, along with the said order forthwith, while also informing the parties.

17.09.2025

parveen kumar

(AMAN CHAUDHARY)
JUDGE

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