



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

145

CRR-1430-2025 (O&M)
Date of decision: 27.05.2025

Pawan Kumar

....Petitioner

Versus

Subhash Chand and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rahul Deswal, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (Oral)

1. The instant revision petition has been preferred against the judgment dated 18.03.2025, passed by learned Additional Sessions Judge, Gurugram, whereby the appeal preferred by the petitioner against the judgment of conviction dated 20.11.2018 and order of sentence dated 27.11.2018, passed by learned Judicial Magistrate Ist Class, Gurugram, has been dismissed.

2. The brief facts of the case are that the complainant/respondent No.1 and the petitioner were sharing friendly terms from the last seven years. The petitioner was facing financial hardship and he sought financial help from the complainant/respondent No.1 on one or two occasions. In December, 2014, the petitioner requested the complainant to help him with Rs.15,00,000/- and he assured the complainant that he will return the amount at the earliest and positively within a period of one year. The complainant with intent to



help the petitioner gave him Rs.15,00,000/- as friendly loan. In first week of January, 2016 when the complainant demanded Rs.15,00,000/- from the petitioner, he issued three cheques bearing No.594484, 594485 and 594486, all dated 18.03.2016, drawn on HDFC Bank Limited Gurugram. On presentation, all the cheques in question returned unpaid vide bank return memos dated 12.04.2016 with the endorsement "account closed". A legal notice was issued for making the payment and thereafter, the complaint was filed.

3. After conclusion of the trial, the learned trial Court convicted the petitioner vide judgment of conviction dated 20.11.2018 and sentenced him to undergo simple imprisonment for a period of 05 months and further directed him to pay compensation to the tune of Rs.20.00 lacs to the complainant. Against the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the learned Lower Appellate Court, however, the same was dismissed vide judgment dated 18.03.2025.

4. Learned counsel for the petitioner, *inter alia*, contends that the respondent has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 and the petitioner was convicted by learned trial Court. Thereafter, the petitioner preferred an appeal before the learned Additional Sessions Judge, Gurugram and the case was listed for arguments for 18.03.2025. The petitioner, at that time, was admitted in ICU of Shiva Hospital, Sector 12-A, Gurugram and the learned counsel representing the petitioner before the learned Lower



Appellate Court filed an application seeking exemption of petitioner from personal appearance, however, the said application was declined by learned Lower Appellate Court on the ground that the application was not supported by any medical record and it was observed that the case is listed for arguments since 21.12.2018.

5. Learned counsel for the petitioner has referred to Para 2 of the impugned judgment passed by learned Additional Sessions Judge, Gurugram and submits that the learned counsel representing the petitioner was directed to advance the arguments in the absence of the petitioner, however, learned Lower Appellate Court observed that the learned counsel representing the petitioner had asked the Court to pass any appropriate order as it deem fit and further observation has been made that learned counsel representing the petitioner was not ready to advance the arguments and thereafter, the learned Lower Appellate Court proceeded to decide the appeal filed by the petitioner on merits.

6. Learned counsel for the petitioner contends that any such practice would amount to denial of fair trial and would suffocate the right of the petitioner granted under Article 21 of the Constitution of India, which is heart and soul of the fundamental rights.

7. In support of his arguments, learned counsel for the petitioner has relied upon the judgments of Hon'ble Supreme Court in *Md. Sukur Ali vs State of Assam, 2011(4) SCC 729* as well as the judgment passed in **Criminal Appeal No.1209 of 2011**, titled as



Chandra Pratap Singh vs State of Madhya Pradesh, decided on **09.10.2023**.

8. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, present revision petition is being decided *in limine* without issuing notice to the respondents in order to save judicial time of the Court and also the litigation costs of the respondents.

9. From the perusal of the record, it transpires that the appeal filed by the petitioner was decided without affording an opportunity to the petitioner to address arguments in his favour. The petitioner should not suffer for the fault of his counsel. The appropriate course for the learned Lower Appellate Court would have been to appoint another counsel as *Amicus Curiae* to defend the case of the petitioner. Further the Hon'ble Supreme Court in ***Md. Sukur Ali's case*** has categorically held that the ***Lawyers in criminal courts are necessities, not luxuries*** and a criminal case should not be decided against the accused in the absence of his counsel. The relevant portion of the judgment in ***Md. Sukur Ali's case (supra)***, reads as follows:-

“5. We are of the opinion that even assuming that the counsel for the accused does not appear because of the counsel's negligence or deliberately, even then the Court should not decide a criminal case against the accused in the absence of his counsel since an accused in a criminal case should not suffer for the fault of his counsel and in such a situation the Court should appoint another counsel as amicus curiae to defend the accused. This is because



liberty of a person is the most important feature of our Constitution. Article 21 which guarantees protection of life and personal liberty is the most important fundamental right of the fundamental rights guaranteed by the Constitution. Article 21 can be said to be the 'heart and soul' of the fundamental rights.

*6. In our opinion, a criminal case should not be decided against the accused in the absence of a counsel. We are fortified in the view we are taking by a decision of the US Supreme Court in **Powell v. Alabama, 287 US 45 (1932)**, in which it was observed:-*

"What, then, does a hearing include? Historically and in practice, in our own country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right. The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because



he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect. If in any case, civil or criminal, a State or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense".

7. The above decision of the US Supreme Court was cited with approval by this Court in **A.S. Mohammed Rafi v. State of Tamil Nadu & Ors., 2011(1) RCR (Criminal) 617 : 2011(1) RCR (Civil) 812 : 2011(1) S.C.T. 708 : 2011(1) R.A.J. 289**, vide para 24.

8. A similar view which we are taking here was also taken by this Court in **Man Singh & Anr. v. State of Madhya Pradesh, 2008(4) RCR (Criminal) 551 : 2008(5) R.A.J. 518 : (2008) 9 SCC 542**, and in **Bapu Limbaji Kamble v. State of Maharashtra, (2005) 11 SC 412**.

9. In this connection we may also refer to Articles 21 and 22(1) of the Constitution. Articles 21 and Articles 22(1) are as under :

"Article 21. Protection of life and personal liberty. - No person shall be deprived of his life or personal liberty except according to procedure established by law".

Article 22(1). Protection against arrest and detention in certain cases. - (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."



*10. In **Maneka Gandhi v. Union of India**, AIR 1978 Supreme Court 597, it has been held by a Constitution Bench of this Court that the procedure for depriving a person of his life or liberty should be fair, reasonable and just. We are of the opinion that it is not fair or just that a criminal case should be decided against an accused in the absence of a counsel. It is only a lawyer who is conversant with law who can properly defend an accused in a criminal case. Hence, in our opinion, if a criminal case (whether a trial or appeal/revision) is decided against an accused in the absence of a counsel, there will be violation of Article 21 of the Constitution.*

11. The right to appear through counsel has existed in England for over three centuries. In ancient Rome there were great lawyers e.g, Cicero, Scaevola, Crassus, etc. who defended the accused. In fact the higher the human race has progressed in civilization, the clearer and stronger has that right appeared, and the more firmly has it been held and asserted. Even in the Nuremberg trials the Nazi war criminals, responsible for killing millions of persons, were yet provided counsel. Therefore when we say that the accused should be provided counsel we are not bringing into existence a new principle but simply recognising what already existed and which civilised people have long enjoyed.

12. Apart from the above, we agree with the eminent jurist Seervai who has said in his "Constitutional Law of India", Third Edition, Vol. I, Pg. 857:-

"The right to be defended by counsel does not appear to have been stressed, and was clearly not considered in any detail in Ajaib Singh's case (1953) SCR 254. But the right of a person accused of an



offence, or against whom any proceedings were taken under the Criminal Procedure Code is a valuable right which was recognised by Section 340 Criminal Procedure Code Article 22 (1) on its language makes that right a constitutional right, and unless there are compelling reasons, Article 22 (1) ought not to be cut down by judicial construction..... It is submitted that Article 22 (1) makes the statutory right under Section 340 Criminal Procedure Code a Constitutional right in respect of criminal or quasi-criminal proceedings."

13. We are fully in agreement with Mr. Seervai regarding his above observations. The Founding Fathers of our Constitution were themselves freedom fighters who had seen civil liberties of our people trampled under foreign rule, and who had themselves been incarcerated for long period under the formula 'Na vakeel, na daleel, na appeal' (No lawyer, no hearing, no appeal). Many of them were lawyers by profession, and knew the importance of counsel, particularly in criminal cases. It was for this reason that they provided for assistance by counsel under Article 22 (1), and that provision must be given the widest construction to effectuate the intention of the Founding Fathers.

14. In this connection, we may also refer to the ringing speech of Rt. Hon. Srinivasa Sastri, speaking in the Imperial Legislative Council, at the introduction of the Rowlatt Bill, Feb 7, 1919 (the Rowlatt Act prohibited counsels to appear for the accused in cases under the Act):-

"When Government undertakes a repressive policy, the innocent are not safe. Men like me would not be



considered innocent. The innocent then is he who forswears politics, who takes no part in the public movements of the times, who retires into his house, mumbles his prayers, pays his taxes, and salaams all the Government officials all round. The man who interferes in politics, the man who goes about collecting money for any public purpose, the man who addresses a public meeting, then becomes a suspect. I am always on the borderland and I, therefore, for personal reasons, if for nothing else, undertake to say that the possession, in the hands of the Executive, of powers of this drastic nature will not hurt only the wicked. It will hurt the good as well as the bad, and there will be such a lowering of public spirit, there will be such a lowering of the political tone in the country, that all your talk of responsible Government will be mere mockery...

"Much better that a few rascals should walk abroad than that the honest man should be obliged for fear of the law of the land to remain shut up in his house, to refrain from the activities which it is in his nature to indulge in, to abstain from all political and public work merely because there is a dreadful law in the land."

*15-16. In **Gideon v. Wainwright**, 372 US 335 (1963) Mr. Justice Hugo Black of the US Supreme Court delivering the unanimous judgment of the Court observed:-*

"Lawyers in criminal courts are necessities, not luxuries"

*In **Brewer v. William**, 430 US 387 (1977) Mr Justice Stewart delivering the opinion of the US Supreme Court observed:-*



"The pressures on state executive and judicial officers charged with the administration of the criminal law are great. But it is precisely the predictability of those pressures that makes imperative a resolute loyalty to the guarantees that the Constitution extends to us all."

10. In view of the aforementioned discussions, the present revision petition is allowed and the impugned judgment dated 18.03.2025, passed by learned Additional Sessions Judge, Gurugram, is set-aside and the matter is remanded back to learned Lower Appellate Court for deciding the issue afresh after affording an opportunity of hearing to the petitioner.

11. Further, the petitioner is directed not to take adjournments without any sufficient cause and he shall complete his arguments within two effective dates of hearing, as the case was initially fixed for arguments in the year 2018.

12. Disposed of.

(HARPREET SINGH BRAR)
JUDGE

27.05.2025

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No