HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

CRA No. 22/2019

Reserved on:- 05.11.2026
Date of Pronouncement:- 13.11.2026
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Whether the operative part or full judgment is pronounced: *Full*

**M/S Makhan Shah Lobana Finance Pvt. Ltd.
Th. its MD S. Rawail Singh, S/o S Bhagwan Singh,
C/o Nehru Market, Jammu, R/o 98, Sector-9, Nanak Nagar, Jammu** .....Appellant(s)

Through: Mr. Pawan Kumar Khajuria, Advocate.

Vs.

**S Mohinder Singh S/o S Ajit Singh,
R/o Village Thikrian (R S Pura), Jammu.**

..... Respondent(s)

Through: Ms. Mandeep Reen, Sr. Advocate with
Mr. Sohil Mustafa, Advocate.

CORAM: HON'BLE MR. JUSTICE YASH PAUL BOURNEY, JUDGE

ORDER

01. The instant appeal has been preferred by the appellant, a Limited Private Finance Company run under the name and style of M/S Makhan Shah Lobana Finance Pvt. Ltd., against the order dated 02.02.2019 passed by the learned Chief Judicial Magistrate, Jammu (*hereinafter referred to as* "***the trial Court***") in file No. 576/Complainant, titled, "***M/S Makhan Shah Lobana Finance Pvt. Ltd. Vs. S. Mohinder Singh***", whereby the complaint filed under Section 138 of the Negotiable Instruments Act (*hereinafter referred to as* "***the N I Act***" was dismissed in default of

appearance, resulting in the acquittal of the accused/respondent under Section 247 of the Code of Criminal Procedure (*in short*, "***the Cr.PC"***).

02. The factual matrix reflects that appellant, through its Managing Director, S Rawail Singh came to file a complaint under Section 138 N I Act against the respondent dated 03.09.2026, which came to be dismissed due to non-appearance of the appellant.

03. It is averred as well as argued that the appellant was suffering from various ailments and hence, being indisposed old aged person, he could not cause appearance, which resulted into dismissal of the complaint. It is further contended that doctor had also advised him to take complete bed rest for two weeks, w.e.f., 30.01.2019 and owing to his ailing health, he was prevented from causing appearance before the Court on 02.02.2019.

04. ***Per contra,*** appellant had been seeking time and opportunities again and again for production of the loan documents, which he could not produce without any justification resulting into the deferment of his cross-examination. Therefore, the trial Court had no option, but to dismiss the complaint. Learned counsel has further argued that a false and frivolous complaint was filed against the respondent, despite the fact that he had already cleared loan taken for one vehicle, but an old cheque was misused by the petitioner to claim an amount on account of advancement of loan for two other vehicles which he never availed. Learned counsel further submits that revival of the complaint, at this stage, would prejudice seriously the interest of the respondent, who is also in old age and, as it would now reset the clock back.

05. Learned senior counsel for the appellant has placed reliance on the judgment of the Hon'ble Supreme Court rendered in case titled, "***The Associated Cement Co. Ltd. Vs. Keshvanand,*** reported as *AIR 1998 SC 596"*.

06. I have considered the submissions made at the Bar and have gone through the record of the trial Court. The record reveals that Memorandum of Accusations in the complaint was read over to the respondent on 27.11.2017, which he denied. However, he did not dispute his signatures on the cheque in question and rather, admitted to have obtained the loan, but claimed that he had cleared the same and had also obtained a receipt/NOC thereof. However, he made no mention of having got the advance amount adjusted against the one vehicle as was alleged in the complaint, nor did he tender any reply to the demand notice issued by petitioner. Nevertheless, he was not precluded from demanding the details of the loans. Appellant on being asked to produce evidence to substantiate the allegations was examined in chief, however, his cross-examination was deferred for production of the loan documents as many as three times. Petitioner produced the photocopies of the relevant documents and certain other documents, but again he was directed to produce the original record even though there was no denial of the factum of taking loan. It clearly reflected that petitioner had been pursuing the complaint with all seriousness. However, owing to his ailing health as confirmed by the doctors' advice, he could not appear on the relevant date and the counsel for the appellant also did not cause appearance, which resulted into

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dismissal of the complaint. In such matters, the trial Court must not have hastened to draw the conclusions and more so when the appellant happened to be a senior citizen.

07. **Section 247** of the Cr.PC permitted the Magistrate to put an end to the proceedings when the complainant adopted dilatory tactics since the accused is required to attend the Courts on posting dates and is thereby has to undergo the harassment. In such a situation, Magistrate has two options; either to adjourn the case when the presence of the complainant is necessary, or to proceed further with the trial when it is considered not necessary, as has been held by the Hon'ble Supreme Court in ***Associated Cement Co. Ltd.'s case*** (supra). However, a perusal of the order impugned would show that neither the complainant, nor the accused was present on the date when the complaint came to be dismissed but learned counsel for the accused appeared and sought exemption. The appellant was got exempted by his counsel on 30.01.2019 on account of his indisposed condition. Therefore, there was no justification for posting the matter just three days later, i.e., on 02.02.2019 and to dismiss the same. Deferring the cross-examination again and again was also not warranted at all and, if at all, appellant could not produce the loan documents in original it would have left the Court free to draw adverse inference but certainly there was no occasion to defer his cross-examination on the mere asking of the other side. Therefore, the trial Court was not justified in prolonging the proceedings and then, to dismiss the complaint.

08. For the foregoing reasons, the order dated 02.02.2019 passed by the trial Court is not in accordance with law and needs to be set at naught. Accordingly, the present appeal is **allowed**. Resultantly, the complaint file stands reopened and restored for proceeding further with the trial in accordance with law.

09. Considering the time already taken, the trial Court shall proceed with the matter expeditiously and make an endeavour to conclude the same within a period of three months. A copy of the order be forwarded to the Court below for information and compliance.

(YASH PAUL BOURNEY)
JUDGE

JAMMU
.11.2026
Ram Krishan

Ram Krishan
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I attest to the accuracy and
integrity of this document