

IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA

Cr. MMO No. 1094 of 2024

Reserved on : 17.9.2025

Decided on: 28.11.2025

Piare Lal

... Petitioner

Versus

Arpna Sharma

...Respondents

Coram

Hon'ble Mr. Justice Virender Singh, Judge

Whether approved for reporting?

For the Petitioner : Mr. Sunny Dhatwalia, Advocate.

For the Respondents : Mr. Hitender Thakur, Advocate.

Virender Singh, Judge

The petitioner has filed the present petition, under Section 528 of the Bharatiya Nyaya Sanhita (hereinafter referred to as 'the BNS'), for quashing the order dated 28.9.2024, passed by the Court of learned Additional Chief Judicial Magistrate, Ghumarwin, District Bilaspur, H.P. (hereinafter referred to as 'the trial Court'), in case No. 126 of 2017, titled as, 'Arpna Sharma versus Piare Lal', by virtue of which, the learned trial Court has closed the evidence of petitioner Piare Lal.

2. Parties to the lis are hereinafter referred to, in the same manner, in which, they were referred to, by the learned trial Court.

3. Brief facts, leading to filing the present petition, before this Court, may be summed up, as under:

Complainant Arpna Sharma has filed the complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the N.I. Act'), against the accused. In the said complaint, the learned trial Court has taken cognizance, and issued notice to the accused, vide order dated 1.9.2017.

3.1 After securing the presence of the accused, notice of accusation was put to him, for the offence, punishable under Section 138 of the N.I. Act, vide order dated 7.12.2017, to which, he pleaded not guilty, and claimed to be tried. As such, the complainant was directed to adduce evidence.

3.2 After closure of evidence of the complainant, the entire incriminating evidence, appearing against him,

was put to the accused, in his statement, recorded under Section 313 Cr. P.C., on 27.4.2024, whereafter, matter was adjourned for defence evidence.

3.3 Consequently, accused has furnished the list of witnesses and deposited the diet money. In the list of witnesses, he has named complainant Arpna Sharma, as one of the defence witnesses. Apart from this, he has named two other witnesses, Kali Dass and Dev Raj, as defence witnesses. Diet money for summoning the above witnesses, was deposited by him, on 1.5.2024.

3.4 On 20.6.2024, the learned trial Court has passed the following order:

“No DWs present. Time prayed and allowed. Let DWs except complainant Arpana Sharma be summoned for 27.7.2024, on filing of PF within seven days.”

3.5 The matter was ordered to be taken up on 27.7.2024. On that date, no DWs were present and DWs were ordered to be summoned for 27.7.2024, except the complainant. On 27.7.2024, DWs were again not present, and the matter was again adjourned for

24.8.2024. On 24.8.2024, the learned trial Court has passed the following order:

“Process issued for DW-3 received back unserved for want of correct address. Let PF/CA be filed within 7 days. Thereafter, order dated 27.7.2024 be again complied with, for 28.9.2024. Dasti process be taken on usual terms. Learned counsel for accused is directed to ensure the presence of DWs, failing which, evidence of the accused deemed closed by the order of the Court.”

3.6 Thereafter, the matter was adjourned for 28.9.2024. On 28.9.2024, after examining one DW, namely Kali Dass, evidence of the accused was closed by the order of the Court.

4. Aggrieved from order dated 28.9.2024, present petition has been filed, mainly on the ground that the learned trial Court has not considered the fact that the accused has deposited the diet money, for summoning the DWs.

5. Highlighting the above facts, the order impugned herein has been assailed, on the ground that once summons have been issued to the complainant, then, she was bound to appear before the learned trial Court,

as defence witness, in compliance to the summons, issued to her.

6 The impugned order has further been assailed on the ground that the learned trial Court has not considered the fact that the complainant herself has not put appearance, before the learned trial Court, as CW, as, her General Power of Attorney, appeared as witness on her behalf. As such, evidence of the complainant, as defence witness, is stated to be necessary for the just adjudication of the case.

7. On the basis of above, Mr. Sunny Dhatwalia, Advocate has stated that the present petition may kindly be allowed, by setting aside the order dated 28.9.2024.

8. Per contra, Mr. Hitender Thakur, Advocate, appearing for the respondent/complainant has argued that the accused has made efforts to do roving inquiry, in the present case, as in the summons, issued against complainant Arpna Sharma, it has simply been mentioned that she be directed to appear before the Court, alongwith record of cheques of Piare Lal (accused).

9. Highlighting the aforesaid facts, it has been argued by learned counsel for the complainant that for the roving inquiry, she cannot be examined. As such, learned counsel for the complainant has supported the orders, passed by the learned trial Court and prayed for the dismissal of the petition.

10. As per the record, after recording the statement of accused, under Section 313 Cr. P.C., opportunity was given to the accused to lead defence evidence, for which, he has taken steps. As stated above, steps were taken on 1.5.2024. Thereafter, he has deposited the diet money, of Rs. 1700/-, for summoning the aforesaid defence witnesses, as ordered by the learned trial Court. On taking steps, the learned trial Court has issued summons against all the three DWs. Summons issued to DW-1 Arpna Sharma are on the record of the learned trial Court, which have been received back with the report that she was not found at her residence, and her mother-in-law refused to accept the same by stating that she has gone to Baddi in connection with her job, and used to visit her home after several months. These

summons were issued for 20.6.2024. On 20.6.2024, learned trial Court, all of a sudden, excluded the complainant, to be summoned as DWs, for 27.7.2024. List of witnesses was approved by the learned trial Court.

11. Consequently, accused has deposited the diet money, and summons were also issued against the complainant. No order with regard to aforesaid report, has been passed by the learned trial Court, on 20.6.2024 to the effect whether said service is proper or not?

12. Thereafter, DWs, except the complainant, were summoned for 24.8.2024. On 24.8.2024, when, the summons issued against Arpna Sharma, received back unserved, for want of correct address, then, accused was directed to file PF/CA, within seven days. However, a rider has been put by the learned trial Court that these summons be issued, as per order dated 27.7.2024, wherein, it has been ordered to summon the DWs, except the complainant.

13. The orders dated 27.4.2024, 20.6.2024, 27.7.2024 and 24.8.2024 are totally silent as to what were the circumstances, which were considered by the learned trial Court in ordering to summon other DWs, except the complainant, whereas, list of witnesses to be examined as defence witness, has been approved and thereafter, summons were issued to all the three DWs, including complainant.

14. On 28.9.2024, a prayer has been made by the accused to examine complainant Arpna Sharma, by defence counsel, however, his prayer has been negated by closing his defense evidence.

15 The perusal of the record shows that in this case, complainant Arpna Singh has not put appearance as CW. On her behalf, her GPA Narattom Dass Sharma has put appearance. The complaint has been filed in the name of Arpna Sharma, through her GPA. Said Narottam Dass Sharma appeared in the witness box as CW-1, and deposed about the case of the complainant.

16. In such situation, the arguments of the learned counsel appearing for the complainant are that Arpna

Sharma cannot be examined as DW, as legal option for the accused was to cross-examine complainant Arpna Sharma, when, appeared as CW, whereas, in the present case, when, the complainant has not appeared in the witness box to depose as per her case, then, accused has every right to summon her as defence witness to elicit the answers to prove/probabilize his defence.

17. This matter can be seen from another angle, as on 27.4.2024, when the learned trial Court has directed the accused to take steps, for summoning the witnesses, he filed the application, mentioning three DWs, including the complainant. The said application was allowed by the learned trial Court, by permitting him to deposit the diet money. Thereafter, notices were also issued against all the three DWs, including complainant (Arpna Sharma). In such situation, it is not understandable as to how the aforesaid order can be reviewed by the learned trial Court, on 27.7.2024, when, the learned trial Court ordered to summon the other DWs, except the complainant, for 24.8.2024.

18. The power to review the order lies with the learned trial Court, only in the case, where there is clerical or arithmetical mistakes. Summoning a particular witness and thereafter, excluding her name, does not fall within the definition of 'clerical or arithmetical error'.

19. Learned counsel for the accused also could not satisfy the judicial conscience of this Court, as to how summoning the complainant, alongwith cheques of the accused, falls within the definition of 'roving inquiry'? In case, the complainant would have appeared before the Court, when, the case was listed for CWs, then, the accused would be in a position to cross-examine her to prove/probabilize his defence. However, in this case, the complainant herself has not opted to put appearance, before the Court and examined her GPA, then, the recourse, which has been adopted by the accused to summon the complainant, as his defence witness, cannot be faulted with, in the present case.

20. Considering all these facts, order dated 28.9.2024 does not sustain in the judicial scrutiny of this Court.

21. Consequently, the present petition is allowed and order dated 28.9.2024 is set aside. The learned trial Court is directed to issue summons to the witnesses, as mentioned in the list of witnesses, submitted by the accused, including complainant Arpna Sharma, which has duly been approved by the learned trial Court, on taking steps, within a period of seven days from the date of appearance of parties. It is further clarified that in case, the summons, so issued, received back after due service, then, the learned trial Court would be at liberty to take coercive action to secure the presence of the witnesses.

22. With these observations, the present petition stands disposed of, so also the pending application(s), if any.

23. The parties to the lis are directed to appear before the learned trial Court, on 8.12.2025, at 10:00 a.m.

24 Record be sent down.

(Virender Singh)
Judge

28.11.2025
Kalpana