

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

Cril. Petn. No.55 of 2022

Shri ThongamBinoy Singh, aged about 55 years, S/o Th.
Shamungou Singh, a resident of SingjameiMayengbamLeikai,
P.O. & P.S. Singjamei, District – Imphal West, Manipur.

....Petitioner/s

- Versus -

Smt. Hemam Asha Devi, aged about 50 years, W/o
HemamShyamjai Singh, a resident of MoirangHemamLeikai,
District – Bishnupur, Manipur – 795133.

...Respondent/s

**BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the Petitioner/s : Mr. AjoyPebam, Advocate
Mr. Kh. Suraj, Advocate

For the Respondent/s : Mr. Anjan Prasad Sahu, Advocate
Ms. Tania RK, Advocate

Date of Hearing : **09.06.2023**

Date of
Judgment & Order : **07.07.2023**

**JUDGMENT AND ORDER
(CAV)**

[1] By the present petition under Section 482 of Cr.P.C. the
petitioner has approached this Court for quashing/setting aside of the
impugned order dated 09.09.2022 passed by the Ld. Chief Judicial

Magistrate, Bishnupur in Cril.(Compliant)N.I. Act Case No.13 of 2019 and remanding the case to be considered on merit.

[2] By the impugned order dated 09.09.2022, the Ld. Chief Judicial Magistrate, Bishnupur dismissed the Cril. Compliant for dishonor of cheque due to absence of the complainant and the case was dismissed for non-prosecution and the accused was discharged.

[3] Heard Mr. AjoyPebam, learned counsel for the petitioner and Mr. Anjan Prasad Sahu, learned counsel for the respondent.

[4] The main grounds taken in the present petition are:

- i) the case was dismissed due to fault of the counsel;*
- ii) the Ld. Chief Judicial Magistrate, Bishnupur failed to comply the provisions of Section 142 (b) of the Negotiable Instrument Act, 1881;*
- iii) the Ld. Chief Judicial Magistrate, Bishnupur failed to issue notice to the petitioner/complainant before the next date.*

[5] Mr. AjoyPebam, learned counsel for the petitioner relies upon the judgment of Hon'ble Supreme Court in the case of Bindeshwari Prasad Singh vs. Kali Singh reported as 1977 (1) SCC 57 and the judgment of Hon'ble Delhi High Court in the case of J.K. International vs. State reported as 2022 CrLJ 2601 to highlight that exercising revisional power or inherent power under Section 482 of Cr.P.C. for dismissal of complaint can be entertained. He also refers to the Law Commission Report No.233

submitted in August, 2009 whereby appropriate amendments and sections 249 and 256 of Cr.P.C. be incorporated by inserting provisions in lines of the Order IX of CPC enabling the Criminal Court for restoration of the complaints.

[6] Mr. AjoyPebam, learned counsel for the petitioner submits that injustice will be caused to the petitioner/complainant if the matter is not heard on merit and prayed that the impugned order be set aside and the Ld. Chief Judicial Magistrate, Bishnupur be directed to decide the matter on merit.

[7] Per contra, Mr. Anjan Prasad Sahu, learned counsel for the respondent has raised the question of maintainability of the present petition. It is submitted that upon dismissal of a complaint on non-appearance of the complainant or on his death, it amounts to acquittal of the accused, if the Court does not postpone/adjourn the case of the hearing on some other day. He further submits that the proceedings of dishonor of cheque is a summons case and the provisions of Section 256 Cr.P.C. will be applicable. He relies on the judgment of Karnataka High Court in Cril. Petn. No.201462 of 2019 wherein it has been held that dismissal of a complaint for cheque bounding amounts to acquittal and the appropriate procedure is to file an appeal and it is submitted that the petitioner be directed to file an appeal before appropriate forum.

[8] Heard the learned counsels for the parties.

[9] On perusal of the provisions of Section 256 of Cr.P.C., it is seen that if the complainant does not appear on the date fixed, the Court shall acquit the accused unless the hearing is adjourned to some other day. Provisions of Section 256 Cr.P.C. is reproduced herein:

"256. Non-appearance or death of complaint. - (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."

[10] It is clear that dismissal of the complaint on non-appearance of the complainant in a summons case amounts to acquittal of the accused and as such, the proper procedure is to file an appeal before an appropriate forum.

[11] Accordingly, the present petition is not maintainable. The petitioner may approach appropriate forum for filing an appeal. The petitioner shall have the benefit under Section 14 of the Limitation Act for excluding the time taken in pursuing the present petition.

[12] With this observation, the petition under Section 482 Cr.P.C. is disposed of. No costs.

JUDGE

FR/NFR

- *Larson*