

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 90 of 2015**

Rakesh Tripathi S/o Shiv Kumar Tripathi Aged About 36 years R/o Hanuman Nagar, Post Office Raipur, Police Station Purani Basti, Raipur, Tahsil and District Raipur C.G.

---- Applicant

Versus

1. Smt. Rashmi Tripathi W/o Rakesh Tripathi Aged About 30 Years R/o Hanuman Nagar, Post Office Raipur, Police Station Purani Basti, Raipur, Tah. And Distt. Raipur C.G.
2. Shri Ramavtar Sharma S/o Devi Prasad Sharma Aged About 73 Years
3. Ajay Sharma S/o Ramavtar Sharma Aged About 45 Years
4. Rajesh Sharma S/o Ramavtar Sharma Aged About 35 Years
5. Pradeep Sharma S/o Ramavtar Sharma Aged About 48 Years Above non-applicants No.2 to 5 R/o Brahmanpara, Bemetara, Post Office And Police Station Bemetara, Distt. Durg Now Distt. Bemetara C.G.
6. Ashok Sharma S/o Madanlal Sharma Aged About 48 Years R/O H. No. 707, Sundarnagar, Post Office Raipur, Police Station D.D. Nagar, Raipur, Tah. And Distt. Raipur C.G.
7. Ashwani Sharma (Ranger) S/o Jawahar Sharma Aged About 45 Years R/O H.No. 701, Sundarnagar, Post Office Raipur, Police Station D.D. Nagar, Raipur, Tah. And Distt. Raipur C.G.
8. Smt. Bharati Sharma W/o Ashwani Sharma Aged About 40 Years R/O H.No. 701, Sundarnagar, Post Office Raipur, Police Station D.D. Nagar, Raipur, Tah. And Distt. Raipur C.G.
9. Smt. Manju Sharma W/o Narendra Sharma Aged About 43 Years R/O H.No. 836, Sundarnagar, Post Office Raipur, Police Station D.D. Nagar, Raipur, Tah. And Distt. Raipur C.G.
10. Smt. Mamta Sharma W/o Sanjay Sharma Aged About 40 Years R/O H.No. 745, Sundarnagar, Post Office Raipur, Police Station D.D. Nagar, Raipur, Tah. And Distt. Raipur C.G.
11. State Of Chhattisgarh Through The District Magistrate, Raipur, Distt. Raipur C.G.

---- Respondents

For applicant	-	Shri Shivendu Pandya, Advocate.
For Respondents No.1 to 10.	-	Shri Anish Tiwari, Advocate.
For Respondent No.11/State	-	Shri Arvind Shukla, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board**26/06/2015**

1. This is a petition under Section 482 of the Cr.P.C. wherein the challenge is to the order dated 20/11/2014 whereby the Criminal Revision No.228/2013 was dismissed in default.
2. The brief facts of the case are that complaint case was filed initially by the applicant Rakesh Tripathi under Section 147, 148, 149, 452, 323, 294, 506-B, 384 and 392 of IPC.
3. In the said complaint after recording of the primary evidence the said complaint was dismissed by the learned JMFC on 14/05/2013 by holding that no offence is made out. Subsequently, the said order was subject of challenge in Criminal Revision No.228/2013 which was filed on 26/06/2013. On 20/11/2014 the court of 8th Additional Sessions Judge, Raipur dismissed the criminal revision in default on the ground that the applicant was absent. The order sheet of the criminal revision would show that it was filed on 26/06/2011 and the applicant was represented by his counsel before the court as many as near about 15 times. Lastly the case was fixed for 19/11/2014 for argument. On 19/11/2014 it shows that applicant or his counsel was absent and thereafter the case was again fixed for further hearing on 20/11/2014. On the next date on 20/11/2014 since applicant or his counsel was absent, therefore case was dismissed in default. Order sheet of the revisional court shows that the applicant appeared on the different dates through his counsel, however subsequently after dismissal an application was filed stating that on 15/11/2014 a near relation of the applicant

died as such he had to go to attend the programme at village Mohranga and immediately after performance of such rituals of last rites he appeared on 20/11/2014 and found that case has been dismissed. Therefore, application was filed to restore the revision.

4. Having heard learned counsel for the parties and after perusal of the documents on record, I am of the opinion that matter requires re-consideration by the revisional court on its merit as otherwise dismissal of revision for default may lead to denial of hearing to the petitioner specially when only on one occasion he remained absent.
5. Taking in to facts and for the reasons stated, in the opinion of this court substantial justice will be sub served, if revisional court hears the case on merit and even otherwise revision and criminal revision cannot be dismissed for want of prosecution and necessarily it is to be on merits.
6. Consequently, order dated 20/11/2014 passed in Criminal Revision No.228/2013 is set aside. Matter is remanded back to the revisional court for fresh adjudication on merits.
7. The parties shall appear before the court on 24th July, 2015. Thereafter, the matter may be heard.
8. Consequently, Cr.M.P. stands disposed of.

Sd/-
(Goutam Bhaduri)
JUDGE