

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

Cr.M.P. No. 1079 of 2014

Rajkumar Jain, S/o Kapoor Chand Jain, aged about 43 years, R/o Maharaja Square, Adarsh Nagar, PS Adarsh Nagar, Durg, District Durg (C.G.)

... Appellant

Versus

Jitendra Kumar Sahu, S/o A.R. Sahu, aged about 39 years, R/o Sahu, Jalebi Bhandar, Niyogi Square, Dallirajhara, Tahsil Balod, District Balod (C.G.) (though in the impugned order mentioned as "District Durg")

... Respondent

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07/08/2015	Mr. Ashish Surana, Advocate, for the Appellant. Heard on I.A. No.1, which is an application for condonation of delay in filing the present petition. Taking into consideration the fact that the Respondent in spite of proper service even before the Court below had not entered appearance, this Court proceeds to decide the case. On due consideration, since sufficient cause has been explained by the Appellant in not filing the instant petition within the stipulated period, the application (I.A. No.1) is allowed and the delay of 502 days caused in filing the instant petition is condoned. On 2.7.2015, this Court had put a query to the Counsel for the Appellant to convince the Court as to how the present petition is maintainable. Today, during the course of argument, Counsel for the Appellant relied upon the decisions of Himachal Pradesh High Court in 2002 Cr.L.J. 4741 (Him Advances and Savings Pvt. Ltd. v. Ravinder Kumar Gupta) and Delhi High Court in 2003 Cr.L.J. 103 (Krishna Kumar Gupta v. Mohd. Jaros & Others), wherein the	

two High Courts have held that dismissal of a complaint for non-appearance of the complainant amounts to acquittal of the accused and since the result of the dismissal of the complaint is the acquittal of the accused, the complainant can challenge the said order only by preferring an appeal and for which he would have to move appropriate application under Section 378 (4) of Cr.P.C.

Taking in view of the judgements of Himachal Pradesh High Court as well as the Delhi High Court, this Court is of the opinion that the present petition is maintainable.

Further, heard on application for grant of leave to appeal, filed under Section 378 (4) of Cr.P.C.

Taking into consideration the judgement passed in AIR 1998 SC 596 (Associated Cement Co. Ltd. v. Keshvanand) wherein the Supreme Court in para 18 has categorically held that the dismissal of the complaint on account of non-appearance of the complainant on a particular date when his presence was not quite necessary was not proper, this Court is of the opinion that it is a fit case where the instant Cr.M.P. filed under Section 378 (4) of Cr.P.C. deserves to be and is allowed.

Accordingly, leave to appeal as prayed for is granted.

Registry is directed to register the instant case as a regular Acquittal Appeal.

List the matter thereafter for further hearing in the month of September, 2015.

Sd/-
(P. Sam Koshy)
JUDGE