

**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**ACQA No. 117 of 2014**

1. Satyendra Kumar Kesharwani S/o Omprakash Kesharwani, aged about 25 years, R/o Near Mata Choura Shiv Mandir, Kududand, P.S. Civil Line, Bilaspur, Tahsil and District Bilaspur C.G.

**---- Appellant**

**Versus**

1. Sanjay Bhaskar S/o Shayam Lal Bhaskar, aged about 26 years, R/o Chota Koni, Besides Bilastal, Near Jai Stambh, Devnagar, Bilaspur, P.S. Koni Civil and Rev. Distt. Bilaspur C.G.

**---- Respondent**

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For Appellant – Shri Hemant Gupta, Advocate.

For Respondent – None, though represented.

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**Hon'ble Shri Justice Chandra Bhushan Bajpai**

**Judgment on Board**

**06/10/2015**

1. This judgment will dispose of the acquittal appeal preferred on behalf of the appellant/complainant against the order passed by the Court below, i.e., Judicial Magistrate First Class, Bilaspur, C.G. in Complaint Case No.29/13 (Satyendra Kumar Kesharwani Vs. Sanjay Bhaskar) wherein and whereunder the learned trial Court on 26-07-2013 dismissed the complaint under Section 256 of the Code of Criminal Procedure, 1973 (in short 'the Code') as the complainant was not present when the case was taken up for hearing.

2. Facts necessary for disposal of the instant acquittal appeal, in brief, are that appellant/complainant Satyendra Kumar Kesharwani had filed a complaint case against the respondent under Section 138 of the Negotiable Instruments Act and Section 420 of the Indian Penal Code, 1860 (in short 'the IPC'). The trial Court took the cognizance under Section 138 of the Negotiable Instruments Act; no any cognizance was taken for the offence under Section 420 of the IPC

vide order dated 28-01-2013. Thereafter, the respondent was issued notice. During further hearing, the case was fixed for particulars of the offence on 26-07-2013. On 26-07-2013, the complainant/appellant was absent, the respondent/accused was also absent but on behalf of the accused/respondent an application for condonation of his non-appearance had been filed and the same was allowed. As the complainant/appellant was absent, the learned Court below held that as the complainant is absent and no any information regarding his absence is given to the Court which shows the negligence of the complainant, hence, the Court below dismissed the complainant under Section 256 of the Code. Against the said dismissal, the appellant preferred the instant acquittal appeal along with the Cr.M.P. for leave to appeal. The Cr.M.P. has been allowed and leave to appeal is granted vide order dated 28-04-2014 of this Court. The acquittal appeal has also been admitted on 28-04-2014.

3. Heard the instant acquittal appeal finally.

4. Learned counsel for the appellant submitted that the appellant/complainant is a practising Advocate at District Court Bilaspur. When the case was taken up for hearing he was busy before another Court to represent the parties for whom he had taken the brief and filed his power. There was no one outside the Court below who could inform him for the call in the instant case. Therefore, he failed to appear when the case was taken up for hearing. Learned counsel representing the complainant was also engaged in other Courts to defend their parties, hence, learned counsel for the complainant also failed to appear for bonafide reasons. Learned counsel further submitted that he will be careful in future; he had a good case to argue, therefore, he be given an opportunity to prove and contest his case on its merit.

5. As the respondent though represented but no one represent the respondent when the present matter is taken up for hearing, there is no written or orall submission in rebuttal.

6. For the purposes of appreciation regarding the argument and grounds taken in the memo of appeal, the memo of appeal and other annexed documents including the impugned order are perused.

7. On due consideration, as the proceeding before the Court below are dismissed under Section 256 of the Code, Section 256 of the Code needs to be mentioned here which reads as under :-

**“256. Non-appearance or death of complainant -** (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:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.”

8. A bare perusal of Section 256 of the Code goes to show that any order unless otherwise passed under this Section amounts to acquittal of the accused. Though in the impugned order, acquittal is not mentioned but Section 256 of the Code is mentioned which goes to show that it is an order of acquittal as provided under Section 255 of the Code.

9. On the basis of the above proposition, the Cr.M.P. was allowed and the leave to appeal was granted and the appeal was admitted for hearing.

10. After perusal of the entire order sheet, it goes to show that on every hearing the complainant was represented, but on 26-07-2013 the complainant was not represented for which learned counsel for the appellant submitted as aforementioned. On due consideration, though the complainant was represented by a counsel, but as he was represented on all previous dates, an opportunity would be appropriate for appreciation of the complaint case on its merit.

11. On due consideration, the instant acquittal appeal filed on behalf of the appellant/complainant is hereby allowed. The order passed by the trial Court on 26-07-2013 for dismissal of complaint in the absence of the complainant under Section 256 of the Code is hereby set aside. The Complaint Case No.29/13 is hereby directed to be restored in its original number. The appellant/complainant is directed to remain present either in person or through his counsel before the Court below on **15-12-2015** for his appearance and further proceedings as per law. The Court below is directed to proceed further as per law in the matter. Copy of the judgment be sent to the Court below immediately for compliance. The appellant/complainant may also file copy of this judgment before the Court below for further hearing as per law. In case, the concerned Court, i.e., Judicial Magistrate First Class, Bilaspur, C.G. is not available, then Chief Judicial Magistrate, Bilaspur is directed to comply the order and proceed with the matter as directed.

12. The appeal allowed.

Sd/-  
(Chandra Bhushan Bajpai)  
JUDGE