

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 472 of 2016**

Om Prakash Sahu S/o Kushva Ram Sahu, aged about 29 years, resident of Sakin – Gopalpur, PS Sarsiwa, Tehsil Bilaigarh, District Baloda Bazar, Bhatapara (CG)

---- **Petitioner****Versus**

Shatrughan Baghel S/o Munshiram, aged about 40 years, resident of Sakin- Jora, PS Bhatgaon, Tehsil Bilaigarh, District Baloda Bazar, Bhatapara (CG)

---- **Respondent**

For Petitioner	:	Ms. Supriya Upasane, Advocate
For Respondent	:	Shri Anand Kesharwani, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****12.08.2016**

The petitioner in the present petition has challenged the order dated 10.02.2016 passed by the 1st Additional Sessions Judge, Baloda Bazar in Criminal Revision No.49/15 whereby the Revisional Court has affirmed the order passed by the JMFC, Bhatgaon on 19.06.2015 in Criminal Complaint Case No. J-183/2014 dismissing the complaint for want of prosecution.

2. Facts of the case in brief are that the present petitioner had filed a complaint case before the JMFC, Bhatgaon, District Baloda Bazar under the provisions of Section 138 and 142 of Negotiable Instrument Act. The allegation against the respondent is that the cheque issued by him in favour of the petitioner got dishonoured on account of insufficient fund. After registration of the complaint, summons were issued to the accused and the matter was fixed for hearing on 19.06.2015. However, on account of absence of the petitioner and on the pleading of his counsel that he has no

instruction, the complaint case was dismissed for want of prosecution vide order dated 19.06.2015. Subsequently, a revision petition was preferred against the said order dated 19.06.2015 which was registered as Criminal Revision No. 49 of 2015. The Revisional Court also vide impugned order dated 10.02.2016 rejected the revision petition leading to the filing of the present CrMP.

3. Counsel for the petitioner submits that the petitioner was regularly appearing before the trial Court but on account of ill health he could not appear on 19.06.2015 nor could give proper instruction to the counsel engaged by him and in the process the complaint case was dismissed for want of prosecution. Therefore, counsel for the petitioner prays for quashment of the impugned order and restoration of the Complaint case. Counsel for the petitioner relied upon 2014 (4) MPHT 69 (Rakesh Kumar Dubey v. State of Madhya Pradesh) and (2002) 7 SCC 726 (Mohd. Azeem v. A. Venkatesh).

4. However, counsel for the respondent opposes the prayer made by the counsel for the petitioner and submits that the petitioner had full knowledge of the date of hearing and therefore there is no scope of interference or recall of the impugned order.

5. Having heard the submissions put forth by the counsel appearing on either side it would be trite to refer to the decisions of the Supreme Court in this regard. In the case of Associated Cement Co. Ltd. v. Keshvanand reported in (1998) 1 SCC 687 in paragraph 18 the Supreme Court has held as under:

“18. Reading the Section in its entirety would reveal that two constraints are imposed on the Court for exercising the power under the Section. First is, if the Court thinks that in a situation it is proper to adjourn the hearing then the Magistrate shall not acquit the accused. Second is when the Magistrate considers that personal attendance of the complainant is not necessary on that day the Magistrate has the power to dispense with his

attendance and proceed with the case. When the Court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the Court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must, therefore, be exercised judicially and fairly without impairing the cause of administration of criminal justice.”

6. The Supreme Court again in the case of Mohd. Azeem v. A. Venkatesh and Another reported in (2002) 7 SCC 726 has very categorically held that in a proceeding under Section 138 of the Negotiable Instruments Act, the dismissal of the complaint case on a singular default in appearance on the part of the complainant is not proper, legal and justified.

7. Taking into consideration the law laid down by the Supreme Court in the above referred two judgments, this Court is of the opinion that ends of justice would meet if the order dated 19.06.2015 dismissing the complaint case for want of prosecution and subsequently the order dated 10.02.2016, affirming the order of the JMFC, of the Revisional Court are set aside and the matter is remitted back to the trial Court for further proceedings with the case from the stage it stood on 19.06.2015. It is accordingly ordered.

8. It is directed that both the parties shall remain present before the trial Court on 25th of October, 2016 and the Trial Court in turn shall proceed further with the case and decide the same as expeditiously as possible.

9. The Cr.M.P. thus stands allowed.

Sd/-

P. Sam Koshy
Judge