

HIGH COURT OF CHHATTISGARH, BILASPUR

Acquittal Appeal No.104 of 2016

Sunil Salunke S/o Madhukar Salunke Aged About 43 Years R/o Marathapara Ward, Dhamtari, Police Station, Tehsil & District- Dhamtari, Chhattisgarh.

---- Petitioner

Versus

Smt. Reeta Chhabra W/o Late Paramjeet Singh Chhabra R/o Near Kuleshwar Mahadev Mandir, Devshri, Talkies Road, Baniyapara, Dhamtari Police Station, Tehsil & District- Dhamtari, Chhattisgarh.

---- Respondent

For Petitioner
For Respondent

Shri Adil Minhaj, Advocate.
Shri RS Patel, Advocate.

SB: Hon'ble Shri Justice P.Sam Koshy

Order On Board

23/12/2016

1. This acquittal appeal has been preferred against the order dated 16.12.2013 passed by the Chief Judicial Magistrate, Dhamtari, in Criminal Case No.237/2013.
2. The facts of the case is that, the present petitioner preferred a complaint case against the respondent for the offence under Section 138 of Negotiable Instrument Act,1882. After framing of charge, the matter for the first time was fixed for recording complainant's evidence on 16.12.2013. Inadvertently, the complainant as well as his counsel noted down the said date to be 17.12.2013 i.e. the very next date. However, on 17.12.2013 when the petitioner approached the court, he came to know that the matter got dismissed for want of prosecution on the previous day i.e. on 16.12.2013.

3. The instant acquittal appeal has been filed seeking for restoration of complainant case and for setting aside the exparte order dated 16.12.2016 so that he would be able to contest the matter on merits.
4. Having heard the counsel appearing for the parties and having perused the records what is clearly reflected is that on account of non appearance of the appellant and his counsel on 16.12.2013 because of the bonafide impression of the date of hearing being 17.12.2013, the complaint cases got dismissed for want of prosecution. Thus, only on account of technical default on the part of complainant, the accused should not get an advantage of the said order passed by the court below.
5. The Supreme Court in the case of Associated Cement Co. Ltd. v. Keshvanand reported in (1998) 1 SCC 687 in paragraph 18 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 one singular default in appearance on the part of the complainant, the dismissal of the complaint case 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 16.12.2013 dismissing the complaints for want of prosecution is set aside and the matter is remitted back to the trial Court for further proceeding with the case from the stage it stood on 16.12.2013. It is accordingly ordered.
8. It is directed that both the parties shall remain present before the trial Court on 24.01.2017 and the trial Court in turn shall proceed further with the case and decide the same as expeditiously as possible.

Sd/-
(P.Sam Koshy)
Judge