

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No.1178 of 2015**

- Chirag Combines Through Its Proprietor/director Shri Himanshu Batavia (Wrongly Mentioned As Batalia In The Rejection Order), S/o Shri Nemchand Batavia Aged About 35 Years, R/o H.P. Petrol Pump (Beside Of Jain Petrol Pump), Aamanaka, G.E. Road, Raipur, Post Office - Raipur, Police Station - Aamanaka, Raipur, Tahsil And District Raiupr Chhattisgarh (Complainant).

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

1. Mahesh Chabda @ Baggi S/o Shri Lalchand Chabda Aged About 34 Years R/o Director/ Proprietor - Deep Agency, Address - First Floor, A.C. Market, Ravi Bhawan, Jaistambh Chowk, Police Station - Golbazar, Raipur, Tahsil & District Raipur Chhattisgarh, Further R/o Mahalaxmi Enclave, Flat No. 202-3 B.H.K. Shanti Chowk, Dhamtari, Tahsil And District Dhamtari Chhattisgarh. Present Address Of Business Place Through Shree Ganesh Mobiles, Shop No. 14-A, First Floor, A.C. Market, Ravi Bhawan, Jaistambh Chowk, Police Station - Golbazar, Raipur, Tahsil And District Raipur Chhattisgarh. (Accused No. 1).
2. Lal Chand Chabda S/o Not Mentioned Aged About 58 Years R/o Director/ Proprietor - Deep Agency, Address - First Floor, A.C. Market, Ravi Bhawan, Jaistambh Chowk, Police Station - Golbazar, Raipur, Tahsil & District Raiur Chhattisgarh, Further R/o Mahalaxmi Enclave, Flat No. 202-3 B.H.K. Shanti Chowk, Dhamtari, Tahsil And District Dhamtari Chhattisgarh. Present Address Of Business Place Through Shree Ganesh Mobiles, Shop No. 14-A, First Floor, A.C. Market, Ravi Bhawan, Jaistambh Chowk, Police Station - Golbazar, Raipur, Tahsil And District Raipur Chhattisgarh. (Accused No. 2).
3. Golu @ Kailash Chabda S/o Shri Lalchand Chabda Aged About 31 Years R/o Director/ Proprietor - Deep Agency, Address - First Floor, A.C. Market, Ravi Bhawan, Jaistambh Chowk, Police Station - Golbazar, Raipur, Tahsil & District Raiur Chhattisgarh, Further R/o Mahalaxmi Enclave, Flat No. 202-3 B.H.K. Shanti Chowk, Dhamtari, Tahsil And District Dhamtari Chhattisgarh. Present Address Of Business Place Through Shree Ganesh Mobiles, Shop No. 14-A, First Floor, A.C. Market, Ravi Bhawan, Jaistambh Chowk, Police Station - Golbazar, Raipur, Tahsil And District Raipur Chhattisgarh. (Accused No. 3).
4. State Of Chhattisgarh, Through The District Magistrate/ Collector, Raipur, District Raipur Chhattisgarh.

---- **Respondents**

Shri Shivendu Pandya, counsel for the petitioner.

Shri Lav Sharma, Panel Lawyer for the State/respondent No.4.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****12.02.2016.**

Heard.

2. Facts in brief as per the present case is that Criminal Case No.543/2013 (Chirag Combines Vs. Mahesh Chabda @ Baggi & Ors.) is pending before Judicial Magistrate First Class, Raipur for trial of offence under Section 138 of the Negotiable Instruments Act, 1881. On 18.6.2014, as the matter was listed for evidence, the petitioner/complainant/revisioner remained absent. He was also not represented by his counsel. Hence, the Court below dismissed the complaint under the provisions of Section 256 of the Code of Criminal Procedure, 1973 (for short 'the Code'). Thereafter the complainant filed criminal revision No.246/14 before Sessions Judge, Raipur and vide order dated 03.9.14, the learned Sessions Judge dismissed the criminal revision and affirmed the order passed by the JMFC. Against the said order, the petitioner had filed the instant Cr.M.P. in which he has taken the ground that on account of bonafide mistake, counsel for the complainant noted down the date of hearing the case as 18.7.14 instead of 18.6.14. and has also taken the ground that the complainant was busy in his business appointments, hence failed to present before the Court on the date of hearing. It is further submitted that the petitioner never remained non active for the trial of the matter, hence it is prayed that by invoking the jurisdiction under Section 482 of the Code, the Court may order

for the restoration of the said complaint case for further trial in the matter.

3. Heard counsel for the parties present before the Court.

4. On behalf of the petitioner, it is submitted that on account of bonafide mistake committed by the counsel for the petitioner and also on account of non availability of the petitioner, neither the petitioner nor his counsel remained present before the Court on 18.6.14. Hence, his case was dismissed under Section 256 of the code. In the larger interest of justice, he be given an opportunity to prove his case and to get the relief as prayed after hearing both the parties.

5. Counsel for the State/respondent No.3 opposed the arguments advanced on behalf of the petitioners.

6. Regarding appreciation of the arguments advanced on behalf of the parties, I have perused the record, impugned order and the order passed in criminal revision.

7. As per provisions under Section 256(1) of the Code which is relevant for the present matter 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.”

8. On perusal of the order sheet, it appears that though no any categorical term, the Court below directed for the acquittal of the accused, but as the matter was dismissed under the provisions of Section 256 of the Code, it goes to show that by exercising the powers under this Section, the trial Court acquitted the accused by dismissing the said complaint which is a post effect of the dismissal of the complaint. As per the settled law, the complainant was absent, he was not represented, the matter was fixed for arguments, as per provisions of law, no other option was left with the trial Court but to proceed with Section 256 of the Code. On the other hand, the revisional Court also not committed any illegality or impropriety by dismissing the revision.

9. Next question before this Court is whether in the entire facts and circumstances, enhanced jurisdiction of this Court should be invoked for awarding opportunity to the petitioner/complainant to establish his case and if succeed, to prove to get the relief under the relevant provision of Section 138 of the Negotiable Instruments Act against the accused. On perusal of the entire facts and circumstances, it appears that by mistake the learned counsel recorded wrong date i.e. 18.7.14 as it was actually 18.6.14 and also as the complainant was not in a position to

appear in person, in the considered view of this Court, an opportunity would be proper in the matter for the trial of the case before the Court below under provisions of law.

10. Consequently, the instant Cr.M.P. is hereby allowed. Order passed by the trial Court in Criminal Complaint Case No.543/13 dated 18.6.14 is hereby quashed. The complaint case is restored to its original number. The complainant is directed to remain present before the said criminal Court having jurisdiction either in person or through his counsel positively on **30.3.2016**. the Court below is directed to record the presence of the complainant in the case and proceed with further trial of the case as per the provisions of law. The petitioner may file a copy of this order before the Court below for compliance. Registrar (Judl.) is directed to send a copy of this order to the Court below for compliance through usual and fax mode. Petition allowed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE