

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 577 of 2016**

Motiram Bandhe S/o Dashrath Bandhe, aged about 49 years, Resident of Chiraipadar (Chidaipadar) Post Koalchur Chowki Bastar, PS Kotwali Jagdalpur, Revenue and Civil District Bastar

---- Petitioner**Versus**

Dalit Kumar Kurre S/o Late Kamdev Kurre, Constable, aged about 45 years, Police Line Jagdalpur, Revenue and Civil District Bastar, CG
Present address Police Line Kondagaon, Revenue and Civil District Kondagaon, CG

---- Respondent

For Applicant	:	Shri Pravin Kumar Tulsyan, Advocate
For Respondent	:	Shri Wasim Miyan, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****29.07.2016**

The present CrMP has been filed under the provisions of Section 482 CrPC questioning the order dated 01.02.2016 passed by the 2nd Additional Sessions Judge, Bastar, Jagdalpur in Criminal Revision No.32/15.

2. Present is a case where the respondent-complainant had initiated a proceeding under section 138 of Negotiable Instrument Act against the petitioner. The trial Court upon registering the complaint ordered for issuance of summons to the applicant. However, in due course of time, on a particular date of hearing, the respondent-complainant and his counsel could not enter appearance before the Court below and therefore the Trial Court vide its order dated 10.09.2015 dismissed the complaint for want of prosecution and accordingly, discharged the applicant from the charge under Section 138 of NI Act.

3. The said order dated 11.09.2015 was questioned by the respondent-complainant before the Revisional Court i.e. the Court of 2nd Additional Sessions Judge, Bastar, Jagdalpur in Criminal Revision No. 32/15. The Revisional Court however upon hearing the parties vide impugned order dated 01.02.2016 allowed revision petition and set aside the order of the Magistrate dismissing the complaint for want of prosecution and further directed the parties to remain present before the trial Court for further proceedings.

4. Counsel for the applicant assailing the impugned order submits that the said order of the Revisional Court is illegal, without jurisdiction and also contrary to law and therefore liable to be set aside. Counsel for the applicant submits that the issue involved in the case is no longer *res integra* for the reason that by now it is a settled position of law by a series of decisions wherein it has been held that against a dismissal of a complaint in default of appearance, the result being the acquittal/discharge of the accused, the only option left with the complainant is to prefer an appeal against the said order and it is only the appellate Court which has the power to interfere with the said order of dismissal. Thus, counsel for the applicant prays for setting aside of the order of Revisional Court as the Revisional Court has failed to appreciate the fact firstly the revision itself was not appropriate remedy for the respondent/complainant and secondly the Revisional Court also was not competent enough to decide the issue involved in revision petition which was otherwise in the realm of the appellate jurisdiction.

5. However, counsel for the respondent/complainant defending the impugned order submits that even if for some technical ground the revision petition would not have been maintainable but the Revisional Court has only passed the order keeping in view the larger interest of justice and also relying

upon the decisions of the Supreme Court and also that of the High Court wherein it has been held that non appearance of an accused on a particular date should not normally result in the dismissal of the complaint more particularly when the presence of the complainant was not of much relevance on the said date of hearing.

6. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of the record admittedly in the present case there is an order of dismissal of a complaint case for want of prosecution. The settled legal position being that only an appeal against the said order would be the proper recourse to question the dismissal resulting in acquittal/discharge. In the opinion of this Court, the filing of the revision at the first instance and thereafter the entertainment of the same by the Revisional Court is contrary to law as also to the settled legal position. There are more than a couple of decisions which hold that a petition which gets dismissed with default amounts to acquittal/discharge of the accused therein and against an order of acquittal, the only remedy would be that of an appeal. Thus, in the opinion of this Court, the impugned order passed by the Revisional Court is per se illegal, bad in law and without authority and jurisdiction. Therefore, the same deserves to be and is accordingly set aside.

7. However, the right of the respondent-complainant stands reserved for preferring a proper regular appeal against the order passed by the Magistrate dismissing the complaint for want of prosecution on 10.09.2015.

8. The present CrMP stands allowed.

Sd/-
P. Sam Koshy
Judge