

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 650 of 2015**

1. Netram Tiwari S/o Shambhu Prasad Tiwari Aged About 50 Years R/o Jarhabhata Durga Mandir Chowk Police Station Civil Line, Revenue And Civil District Bilaspur Chhattisgarh

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

1. Ms. Lata Singh Chhatrriya D/o Late Shri Bhagwati Singh Chhatrriya, Occupation Advocate, R/o Tarbahar Near F. C. I. Godown District Bilaspur Chhattisgarh

---- **Respondent**

For Petitioner	:	Shri Yogeshwar Sharma, Advocate
For Respondent	:	None though served.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****29/02/2016**

1. The brief facts required for disposal of the instant Writ Petition (227) are that the petitioner had filed a Complaint Case No.323/11 (Netram Tiwari Vs. Smt. Lata Singh Chhatrriya) under the provisions of Section 138 of the Negotiable Instruments Act, 1881 before the Judicial Magistrate First Class, Bilaspur (CG). The trial Court registered the said Cr. Case on 25.8.2011 and thereafter, listed the matter for appearance of the accused/respondent. The accused/respondent never gave his appearance before the trial Court. On 21.11.2012, the matter was fixed for hearing. On the said date, the petitioner/complainant remained absent. Then the matter was fixed for hearing on the next date i.e. 22.11.2012 and as the complainant/petitioner not represented either in person or through his counsel, the Court below dismissed the case under Section 256 of the Code of Criminal Procedure, 1973 (in brevity

the Code). Against the said order, the petitioner/complainant had preferred Cr. Revision No.23/2015. The 1st Additional Sessions Judge, Bilaspur (CG) vide order dated 11.5.2015 dismissed the revision and affirmed the order passed by the trial Court. Against the said order the petitioner approached this Court and prayed that jurisdiction under Article 227 of the Constitution of India be invoked and the order passed by the trial Court dated 22.11.2012 be quashed.

2. On behalf of the petitioner the grounds are taken that the order passed by the Court below is bad and improper. On 21.11.2012, the petitioner could not appear due to illness and on 22.11.2012, the trial Court dismissed the case without giving proper opportunity of hearing to the petitioner. It is submitted that the order requires interference and the petition may be allowed by quashing the order in question.

3. Heard learned counsel for the petitioner and perused the petition and the annexed documents.

4. It is submitted on behalf of the petitioner that only on one date that too on account of illness, the petitioner failed to appear, whereas, the respondent had never appeared before the trial Court. The matter was not heard on its merits. The trial Court ought to have adjourned the matter and would have afforded an opportunity to the petitioner. As the respondent/accused had not given appearance, with this, there is no question of acquittal though it is not specifically mentioned in the order sheet dated 22.11.2012, but the effect to proceed under Section 256 of the Code goes to show that the trial Court has acquitted the accused, the order of acquittal finds place under the provisions of Section 255 (1) of the Code. The respondent/accused has never given appearance, hence, the order passed by the Court below is bad in law. The matter may be disposed of on its merits by granting a reasonable opportunity to

the petitioner to prove his case against the respondent.

5. From perusal of the entire documents submitted on behalf of the petitioner, it goes to show that till 22.11.2012, the respondent/accused was not appearing before the trial Court and only on one hearing date, the petitioner was not represented, as submitted on account of his illness, the order of acquittal and the stage is well defined in Section 255 (1) of the Code. Even otherwise, in the larger interest of justice, it would be appropriate to grant a reasonable opportunity to the petitioner to prove his case on its merits and the matter may be disposed of on its merits.

6. On due consideration the petition is allowed. Considering the larger interest of justice, the order dated 22.11.2012 passed by the Judicial Magistrate First Class, Bilaspur (CG) in Cr. Case No.323/11 under Section 138 of the Negotiable Instruments Act is hereby quashed. The said Complaint Case is restored to its original number. The petitioner is directed to remain present either in person or through his counsel before the Court below on **20th April, 2016**.

7. The trial Court is directed to record the appearance of the petitioner and further directed to proceed in the matter according to law.

8. The petition stands disposed of.

9. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)
Judge