

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 378 of 2016

1. Goyal Global Steel Suppliers Proprietor - Mukesh Goyal S/o Dharamchand Goyal, R/o 216, Deshbandhu Complex, Agrasen Chowk, Raipur, Civil & Revenue District Raipur, Chhattisgarh (Revisioner/Complainant)

---- Petitioner

Versus

1. Vikas Pandey Proprieter Balajee Infrastructure, Resident Of 118, Placim Paradise, A. B. Road, Near Malwa Institute Of Technology, Indore, Madhya Pradesh (Respondent No.1)
2. State Of Chhattisgarh Through - District Magistrate, Raipur, Chhattisgarh (Respondent No.2)

---- Respondents

For Petitioner	:	Shri Kaushal Yadav, Advocate
For Respondent No.2/State	:	Smt. M. Asha, Panel Lawyer
Respondent No.1 not noticed.		

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

28/03/2016

1. Heard.
2. Learned counsel for the petitioner submits that the matter may be disposed of even without noticing to respondent No.1 as respondent No.1 has not appeared before the Judicial Magistrate First Class, Raipur (CG) in an unregistered Cr. Complaint Case (Goyal Global Steel Suppliers Vs. Vikas Pandey & Anr.). The said Cr. Compliant Case was not registered and summons were not issued, and on 6.8.2015 in absence of any representation on behalf of the applicant, the trial Court rejected it for non-prosecution. The revisional Court has not committed any error. The revisional Court has no jurisdiction to restore the same, but this Court by invoking jurisdiction under Section 482 Cr.P.C. may order and grant an opportunity to the petitioner for

taking part in the hearing of said unregistered Cr. Complaint Case on its merits. As respondent No.1 was not noticed, the case was not registered. The matter may be disposed of by awarding an opportunity to the petitioner as on a bonafide mistake, learned counsel for the petitioner/complainant wrongly noted the date of hearing as 6.9.2015 instead of 6.8.2015.

3. On due consideration, the matter heard finally at the motion stage itself without even noticing to respondent 1.

4. It is submitted that on behalf of the petitioner that purely on humanitarian ground on a bonafide mistake by taking wrong note regarding the date of hearing by the counsel for the applicant, the applicant or the counsel for the applicant failed to appear before the Court below and the matter was dismissed for non-prosecution before registration, hence, the petitioner may be given an opportunity to take part in the further proceedings of the said unregistered Cr. Complaint Case and let the matter be disposed of on its merits as per provisions of law.

5. To appreciate the arguments advanced in this behalf, the instant Cr.M.P. and the documents annexed including the impugned order passed by the revisional Court against the order of the trial Court dated 6.8.2015 are perused. From perusal of the entire material available, it goes to show that the petitioner has filed a Cr. Complaint Case under the provisions of Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 against respondent 1. The same was pending before the trial Court for arguments on registration and the date fixed by the trial Court was 6.8.2015. On that very date of hearing the trial Court has dismissed the Cr. complaint case for non-prosecution. It is submitted on behalf of the petitioner that the counsel for the complainant had wrongly note down the date of hearing that is why there was no representation on the date of hearing before the trial Court. It also goes to reveal that the matter belongs to dishonour of Cheque of Rs.49 lacs. The fact

has been duly supported by an affidavit.

6. On due consideration, I am of the opinion that this is a fit case where inherent jurisdiction under Section 482 Cr.P.C. can be invoked and an opportunity should be given to the applicant/complainant to appear before the trial Court for further hearing as per law. Opportunity should also be granted to the applicant to submit his case and get an order on merits of the case.

7. On due consideration, the order passed by the trial Court in the said unregistered Cr. Complaint Case (Goyal Global Steel Suppliers Vs. Vikas Pandey & Anr.) under Section 138 read with Section 142 of the Negotiable Instruments Act against respondent No.1, dismissed for want of prosecution dated 6.8.2015, is hereby quashed and the same is restored to its original position.

8. The petitioner/ applicant is directed to remain present in person or through his counsel before trial Court on **28th April, 2016**. He shall not be given any other opportunity for further hearing, if he does not appear as directed. The petitioner may file a copy of this order before the trial Court for compliance.

9. Registrar (J) is further directed to send a copy of this order to the concerned trial Court through usual and fax mode immediately.

10. The petition is disposed of.

11. Certified copy as per rules.

Sd/

(Chandra Bhushan Bajpai)

Judge