

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 42 of 2016

1. Sanjay Pandey S/o Raghav Pandey; aged about - 43 years, Occupation – Electric Works and Bore-wells; R/o Mohlla Kedarpur Bhatthi Road, Trikon Chowk, near Ayurvedic Office Ambikapur; District (Revenue and Civil) Surguja Chhattisgarh. (Complainant)

---- Petitioner

Versus

1. Mo. Farukh Musalman S/o Shekh Shamiullah; aged about - 30 years; Occupation – Brick cline owner; R/o Village – Belkharikha (Koilar Para); Police Station – Darima; District (Revenue and Civil) Surguja Chhattisgarh. (Non-applicant)

---- Respondent

For Petitioner – Shri S.D. Singh, Advocate.
For Respondent – None, not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

03/03/2016

1. It is submitted that looking to the entire facts of the instant Cr.M.P. and also with the facts that till the dismissal of the complaint filed on behalf of the petitioner before the Court below, i.e., 16-09-2015, the respondent was not summoned, the complaint case under Section 138 of the Negotiable Instruments Act was also not registered and also looking to the fact that before the revisional Court the respondent remained absent, notice to the respondent is not required and the matter may be disposed of at the motion stage itself finally without noticing to the respondent.

2. On due consideration, after perusal of the relevant facts, the matter heard finally at the motion stage itself without issuance of notice to the respondent.

3. Brief facts required for adjudication of the instant Cr.M.P. preferred under Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Code') are that the petitioner had filed a complaint case against the respondent under

Section 138 of the Negotiable Instruments Act /Section 420 of the Indian Penal Code, 1860 (in short 'the IPC). The same was unregistered and pending before the Judicial Magistrate First Class, Ambikapur (Surguja), C.G. The respondent was not summoned, the case was not registered, cognizance was not taken. On 16-09-2015 as the complainant remained absent, the trial Court dismissed the said complaint for non-prosecution. Against the said order complainant/reversioner/petitioner preferred Criminal Revision No.68/2015. The revisional Court, i.e., Vth Additional Sessions Judge, Surguja (Ambikapur) vide order dated 28-11-2015 dismissed the criminal revision and held that the order was passed under Section 256(1) of the Code and the same is lawful and there is no provision in the Code for restoration of the complaint case dismissed for want of prosecution. Hence, the revisional Court declined to interfere with the order of the trial Court and dismissed the revision. Against the said dismissal, the complainant/revisioner/petitioner preferred the instant Cr.M.P. praying that inherent jurisdiction available with this Court under Section 482 of the Code be invoked to secure the ends of justice as the petitioner was ailing, on the hearing date he was not in a position to make his appearance before the trial Court. He had also annexed Annexure-P/5, a medical certificate issued by a registered medical practitioner and submitted that though he had not made alternative arrangement to give his appearance through a lawyer, but as the complainant was not decided on its merit and he had a good case to present before the trial Court, he be given an opportunity; in future he will be well represented through his counsel in case of such exigency and the matter may be decided on its merit. Hence, it is prayed that the petition may be allowed and the order dated 16-09-2015 be quashed.

4. Heard learned counsel for the petitioner and perused the documents annexed along with the Cr.M.P.

5. Learned counsel for the petitioner duly supported the grounds taken in the instant Cr.M.P. and would submit that looking to the entire facts, an opportunity be granted with restoration of the said unregistered complaint case to proceed in the matter as per provisions of law.

6. From perusal of the material annexed along with the instant Cr.M.P., it goes to show that the complaint filed under Section 138 of the Negotiable Instruments Act/Section 420 of the IPC by the petitioner before the trial Court was not registered, the respondent was not summoned, cognizance was not taken. The said complaint was not registered and on 16-09-2015 in the absence of the complainant the matter was dismissed for want of prosecution.

7. From perusal of Section 256(1) of the Code, it goes to show as the summons were not issued on the complaint, provision of Section 256(1) of the Code is not attracted. The revisional Court though disposed of the said revision as per law, but committed mistake of law to hold that Section 256(1) of the Code is attracted. In the considered view of this Court, Section 256(1) of the Code is not attracted in the matter as the summons were not issued.

8. True, there is no any provision to restore a complaint dismissed for want of prosecution in the procedural Code, but, this Court while invoking the inherent jurisdiction given under Section 482 of the Code may make such order as it deems fit to secure the ends of justice in the present case. If a complaint is filed for taking cognizance under some provisions of law and if the petitioner remained absent on account of ailment though he had not taken care to be represented through a counsel, but if at all a mistake committed, it would be appropriate to grant an opportunity to prove the complaint on its merit and to get an order of a criminal Court after due appreciation of the matter.

9. Looking to the ailment of the petitioner on 16-09-2015, order of the trial Court dismissing the complaint for non-prosecution requires interference under the application of Section 482 of the Code.

10. Consequently, the instant Cr.M.P. is hereby allowed. The order passed by the trial Court dated 16-09-2015 is hereby set aside and the said complaint is restored. The petitioner is directed to remain present before the trial Court either in person or through his counsel on **21-04-2016**. The Court below is directed to after taking appearance of the complainant either in person or through counsel, proceed further in the matter as per provision of law, i.e., under Chapter XV of the Code and other provisions applicable.

11. The petition allowed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE