

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 75 of 2016**

Sachin Dhadiwal aged about 42 years S/o Shri D. Dhadiwal, C/o Dhadiwal Ply, Vijeta Complex, Shastri Bazar, Raipur, Tahsil & District Raipur (CG)

---- Appellant**Versus**

1. Narayan Agrawal, aged about 45 years S/o Shri Omprakash Agrawal, Proprietor, A. K. Construction, HIG-II/1, Old Borsi Road, Durg, Tahsil and District Durg, Chhattisgarh.
2. State of Chhattisgarh through the District Magistrate, Raipur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Pawan Kesharwani, Advocate
For Respondent no.1	:	Shri Dharmesh Shrivastava, Advocate
For Respondent no.2	:	Shri U. K. S. Chandel, P.L.

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

The present appeal has been filed seeking for quashment of the order dated 17.09.2014 passed by the Additional Chief Judicial Magistrate, Raipur in Criminal Complaint Case No. 72/10 which got dismissed for want of prosecution.

2. Counsel for the appellant submits that the appellant/complainant had filed a complaint before the Court below under the provisions of Section 138 of Negotiable Instrument Act on 17.12.2009. After registration of the complaint, summons were issued to the accused and the matter was finally fixed for evidence of the complainant on 17.09.2014. However, on the said date the complainant or his advocate could not appear before the Court and therefore the trial Court vide its

order dated 17.09.2014 dismissed the complaint for want of prosecution and accordingly acquitted the accused of the charge levelled against him leading to the filing of the present acquittal appeal.

3. The appellant had also filed a criminal revision against the said order dated 17.09.2014 which was rejected by the Revisional Court vide order dated 09.09.2015 on the ground that the same was not under its jurisdiction and the remedy against an order of dismissal for want of prosecution would be an appeal.

4. The Supreme Court in the case of Associated Cement Co. Ltd. v. Keshvanand reported in (1998) 1 SCC 687 in paragraph 18 has held as under:

“18. Reading the Section in its entirety would reveal that two constraints are imposed on the Court for exercising the power under the Section. First is, if the Court thinks that in a situation it is proper to adjourn the hearing then the Magistrate shall not acquit the accused. Second is when the Magistrate considers that personal attendance of the complainant is not necessary on that day the Magistrate has the power to dispense with his attendance and proceed with the case. When the Court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the Court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must, therefore, be exercised judicially and fairly without impairing the cause of administration of criminal justice.”

5. The Supreme Court again in the case of Mohd. Azeem v. A. Venkatesh and Another reported in (2002) 7 SCC 726 has very categorically held that in a proceeding under Section 138 of the Negotiable Instruments Act, the one singular default in appearance on

the part of the complainant, the dismissal of the complaint case is not proper, legal and justified.

6. Taking into consideration the law laid down by the Supreme Court in the above referred two judgments, this Court is of the opinion that ends of justice would meet if the order dated 17.09.2014 dismissing the complaint for want of prosecution is set aside and the matter is remitted back to the trial Court for further proceedings with the case from the stage it stood on 17.09.2014. It is accordingly ordered.

7. It is directed that both the parties shall remain present before the trial Court on 6th of September, 2016 and the trial Court in turn shall proceed further with the case and decide the same as expeditiously as possible.

Sd/-

P. Sam Koshy

Judge