

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No.1171 of 2015**

- Chirag Combines Through Its Proprietor/director Shri Himanshu Batavia (Wrongly Mentioned As Batalia In The Rejection Order), S/o Shri Nemchand Batavia Aged About 35 Years, R/o H.P. Petrol Pump (Beside Of Jain Petrol Pump), Aamanaka, G.E. Road, Raipur, Post Office - Raipur, Police Station - Aamanaka, Raipur, Tahsil And District Raiupr Chhattisgarh **(Complainant)**.

---- Petitioner

Versus

1. Mahesh Chabda @ Baggi S/o Shri Lalchand Chabda Aged About 34 Years, **(Accused No. 1)**.
2. Lal Chand Chabda S/o Not Mentioned Aged About 58 Years **(Accused No. 2)**.
3. Golu @ Kailash Chabda S/o Shri Lalchand Chabda Aged About 31 Years **(Accused No. 3)**.

All are R/o Director/ Proprietor - Deep Agency, Address - First Floor, A.C. Market, Ravi Bhawan, Jaistambh Chowk, Police Station - Golbazar, Raipur, Tahsil & District Raipur Chhattisgarh, Further R/o Mahalaxmi Enclave, Flat No. 202-3 B.H.K. Shanti Chowk, Dhamtari, Tahsil And District Dhamtari Chhattisgarh. Present Address Of Business Place Through Shree Ganesh Mobiles, Shop No. 14-A, First Floor, A.C. Market, Ravi Bhawan, Jaistambh Chowk, Police Station - Golbazar, Raipur, Tahsil And District Raipur Chhattisgarh.

4. State Of Chhattisgarh, Through The District Magistrate/ Collector, Raipur, District Raipur Chhattisgarh.

---- Respondents

Shri Shivendu Pandya, counsel for the petitioner.
 Shri Ashutosh Shukla, counsel for respondents 1 to 3.
 Shri Lav Sharma, Panel Lawyer for the State/respondent No.4.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****11.03.2016.**

Heard.

2. Facts in brief as per the present case is that Criminal Case No.542/2013 (Chirag Combines Vs. Mahesh Chabda @ Baggi & Ors.) is pending before Judicial Magistrate First Class, Raipur for

trial of offence under Section 138 of the Negotiable Instruments Act, 1881. On 18.6.2014, when the matter was listed for evidence of the complainant, the petitioner/complainant/revisioner remained absent. He was also not represented by his counsel. The accused were also not present in person or through their counsel. Hence, the Court below dismissed the complaint under the provisions of Section 256 of the Code of Criminal Procedure, 1973 (for short 'the Code'). Thereafter the complainant filed criminal revision No.244/14 before Sessions Judge, Raipur and vide order dated 03.9.14, the learned Sessions Judge dismissed the criminal revision and affirmed the order passed by the JMFC. Against the said order, the petitioner has filed the instant Cr.M.P. by invoking the jurisdiction under Section 482 of the Code in which he has taken the ground that on account of bonafide mistake, counsel for the complainant noted down the date of hearing of the case as 18.7.14 instead of 18.6.14. and has also taken the ground that the complainant was busy in his business appointments, hence failed to present before the Court on the date of hearing. It is further submitted that the petitioner never remained non active for the trial of the matter. Though on the other hand, on earlier date i.e. 20.5.14 on the request of counsel for the respondents in an application under Section 317 of the Code, the Court allowed an opportunity to cross examined the complaints' witnesses. Hence, it is prayed that by invoking the jurisdiction under Section 482 of the Code, the Court may order for the restoration of the said complaint case for further trial in the matter.

3. Heard counsel for the parties present before the Court.
4. On behalf of respondents 1 to 3, written response/reply has been filed wherein it is submitted that the court below on 18.6.2014, called the case for hearing many times till evening and it is not correct that the counsel on bonafide mistake noted down the date as 18.7.2014 instead of 18.6.2014. It is apparent that the petitioner was knowing about the date even though he was busy of his business work, which goes to show that he was not willing to adduce evidence against the respondents and as the trial Court clearly mentioned on 20.5.2014 that both the parties should remain present at about 11.00 am and whoever remain absent, proceedings may be commenced as per law for which the parties shall be responsible. It is submitted on behalf of the respondents that the revisional court in elaborate order affirmed the order passed by the Magistrate, no illegality or impropriety committed by the trial Court, hence the instant petition may be dismissed.
5. On behalf of the petitioner, it is submitted that on account of bonafide mistake committed by the counsel for the petitioner and also on account of non availability of the petitioner, neither the petitioner nor his counsel remained present before the Court on 18.6.14. Hence, his case was dismissed under Section 256 of the Code. In the larger interest of justice, he may be given an opportunity to prove his case and the relief as prayed may be granted after hearing both the parties.

6. Counsel for the State and also counsel for respondents 1 to 3 duly supported the arguments and grounds taken in their reply and submitted that as the petitioner failed to make out his case regarding his bonafide, there is no scope for interference in the order passed by the trial court and affirmed by the revisional court, hence the petition may be dismissed. Counsel for respondents 1 to 3 further draws attention to the para 7, 9 and 13 of the order of the revisional court and submitted that as there was not illegality, impropriety or incorrectness committed by the trial court, the petition may be dismissed.

7. Regarding appreciation of the arguments advanced on behalf of the parties, I have perused the record, impugned order and the order passed in criminal revision.

8. As per provisions under Section 256(1) of the Code which is relevant for the present matter reads as under:

“256. Non-appearance or death of complainant.-

(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.”

9. On perusal of the order sheet, it appears that though no any categorical term, the Court below directed for the acquittal of the accused, but as the matter was dismissed under the provisions of Section 256 of the Code and also looking to the earlier order dated 20.5.2014, it goes to show that summons were issued to the respondents, respondents were taking part in the trial, substance of acquisition explained and the matter was listed for evidence under the provisions of Section 254 of the Code. With this post effect of the impugned order dated 18.6.2014 deemed as acquittal of the accused as mentioned under Section 256(1) of the Code. The complainant was absent, he was not represented, the accused were also not present and were also not represented as the matter was listed for evidence of the complainant and, as per provisions of law, no other option was left with the trial Court but to proceed with Section 256 of the Code. On the other hand, the revisional Court also not committed any illegality or impropriety by dismissing the revision.

10. Next question before this Court is whether in the entire facts and circumstances, inherent jurisdiction of this Court should be invoked for awarding opportunity to the petitioner/complainant to establish his case and if he succeeds to prove to get the relief under the relevant provision of Section 138 of the Negotiable Instruments Act against the accused. On perusal of the entire facts and circumstances, it appears that immediately prior to the impugned order i.e. on 20.5.2014 the complainant was present

along with his counsel, the accused persons were absent and were represented through their counsel, an application under Section 317 of the Code was filed on behalf of the respondents and also counsel for the respondent prayed for opportunity to cross examine the complainant's witnesses. The court below on a request made in this behalf by the respondents adjourned the matter and listed it for further hearing on 18.6.2014. A perusal of the facts goes to show that by mistake of the learned counsel of the complainant who recorded wrong date i.e. 18.7.14 as it was actually 18.6.14 and also the complainant was not in a position to appear in person, and also the earlier conduct of the respondents where they were remained absent on 20.5.2014 and also impugned order 18.6.14 and on 18.6.2014 even the respondents were not represented through their counsel. Looking to the entire facts, in the considered view of this Court, an opportunity would be proper in the matter for the trial of the case before the Court below under provisions of law.

11. Consequently, the instant Cr.M.P. is hereby allowed. Order dated 18.6.14 passed by the trial Court in Criminal Complaint Case No.542/13 is hereby quashed. The complaint case is restored to its original number. The complainant is directed to remain present before the said criminal Court having jurisdiction either in person or through his counsel positively on **30.3.2016**. The Court below is directed to record the presence of the complainant in the case and proceed with further trial of the case

as per the provisions of law. The petitioner may file a copy of this order before the Court below for compliance. Registrar (Judl.) is directed to send a copy of this order to the Court below for compliance through usual and fax mode. Petition allowed.

**Sd/-
(Chandra Bhushan Bajpai)
JUDGE**

Bini