

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.858 of 2016**

- Gulam Murtuza S/o M. W. Hassan Aged About 44 Years R/o Aalam Niwas, Nurani Chowk Kabadi Gali, Raja Talab, P.S. Civil Line Raipur, District Raipur Chhattisgarh

---- Petitioner

Versus

- Shahzade Ahmed S/o Abdul Hamid Aged About 50 Years R/o Afroz Badi, Post & P.S. Maudahapara, Tahsil & District Raipur Chhattisgarh

---- Respondent

For applicant	: Shri SI Ali, Advocate.
For respondent	: Shri JK Gupta, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****29.9.2016**

Heard.

2. Brief facts, required for the disposal of the instant Cr.M.P. filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') are that Criminal Complaint Case No.381/2013 (Shahzade Ahmed Vs. Gulam Murtuza) under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') was pending before the Judicial Magistrate First Class, Raipur (CG). The complainant/present respondent was not represented on the date of hearing i.e. on 23.4.2016 before the concerned trial Court. The trial Court vide order dated 23.4.2016 dismissed the said complaint under the provisions of Section 256 of the Code and acquitted the accused/petitioner herein on the charges under Section 138 of the Act. Against the said order, the

complainant preferred Criminal Revision No.176/2016 before the Sessions Judge, Raipur (CG). The learned revisional Court vide order dated 05.8.2016 allowed the revision and set aside the order dated 23.4.2016 and remanded the matter for disposal in accordance with law with a direction to both the parties to remain present before the trial Court on 16.8.2016. Against the said order, the respondent/accused had preferred the instant petition under Section 482 of the Code for quashment of the order dated 05.8.2016 passed by the revisional Court.

3. Learned counsel for the petitioner duly supported the instant petition and submitted that the order passed by the Magistrate under Section 256 of the Code is not an order against which the revision would lie. Hence, the order passed by the revisional Court is beyond authority of law and liable to be dismissed.

4. Learned counsel for the respondent duly supported the impugned order dated 05.8.2016 passed by the revisional Court.

5. For consideration of the above legal position, whether revision would lie or not for relief, Sections 255 and 256 of the Code are reproduced as under:

“255. Acquittal or conviction. - (1) If the Magistrate, upon taking the evidence referred to in section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal.

(2) Where the Magistrate does not proceed in accordance with the provisions of section 325 or section 360, he shall, if he finds the accused guilty, pass sentence upon him according to law.

(3) A Magistrate may, under Section 252 or section 255, convict the accused of any offence triable under this Chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby.

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

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.”

6. On perusal of the above provisions of law goes to show that order passed by the Magistrate under the authority of Section 256 of the code is an order of acquittal. If so, the effect of said acquittal would cover the provisions contained in Section 255 of the Code which goes to show that order passed by the Magistrate is not an order which can be assailed by filing the revision. On the other hand, the said order could only be assailed as if the appeal under the relevant provisions of Section 378(4) of the Code or may be under the proviso of Section 372 of the Code as per the provisions of law. With this, this Court is of the considered view that the order passed by the Sessions Judge, exercising the revisional jurisdiction, was beyond his jurisdiction against the settled law and *sans substance*.

7. Consequently, the instant petition filed by the petitioner/accused is hereby allowed. Order dated 05.8.2016 passed by the Sessions Judge in Criminal Revision No.176/2016 is hereby set aside. However, the complainant/respondent may avail opportunity available under the procedural law and the limitation law to challenge the order dated 23.4.2016 passed by the Magistrate if he wish so and the law permits.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE