

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 763 of 2016**

Om Narayan Singh @ Munna Singh S/o Shri Lt. Surajpal Singh Aged About 52 Years R/o 534/20, Chowrasiya Colony, Matpurana Santoshi Nagar, Tikrapara, Raipur, Chhattisgarh.

---- **Petitioner**

Versus

Abhay Kale S/o Shri B.K. Kale Aged About 41 Years R/o 324, Priyadarshini Nagar, P.S. Tikrapara, District Raipur, Chhattisgarh.

---- **Respondent**

For petitioner
For respondent

Shri Maneesh Sharma, Advocate.
Shri Shobhit Kosta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/12/2016

1. The present revision has been preferred assailing the order dated 20.05.2016 passed in Criminal Revision No.21/2013 by the 8th Additional Sessions Judge, Raipur. Vide the said order, the court below in exercise of its revisional power has set aside the order of JMFC, Raipur in complaint case No.305/2009 which got dismissed for want of prosecution on 14.06.2012.
2. The relevant facts in brief is that, the respondent in the instant case had filed a complaint case against the petitioner under Section 138 of Negotiable Instruments Act (for short, the NI Act). The said complaint was filed as early as on 11.09.2008 and which was registered and notices were issued for appearance of the petitioner. Since 2008 onwards despite summons, fresh summons and bailable warrant and

non bailable warrant being issued for appearance of accused person, appearance could not be effected upon. However, when the matter was listed on 14.06.2012, neither complainant appeared nor was represented through his counsel before the court below and therefore, the court below vide order dated 14.06.2012 dismissed the complainant case for want of prosecution.

3. Against dismissal of said complaint case under Section 138 NI Act, the complainant preferred a revision before the sessions court i.e. 8th Additional Sessions Judge wherein the case was registered as Criminal Revision No.21 of 2013. The revisional court, taking into consideration the entire facts and circumstances of the case vide order impugned order dated 20.05.2016, set aside the order of JMFC dated 14.06.2012 and directed the parties to enter appearance before the JMFC on 15.06.2016 for further proceeding. It is this order which is under challenge in this petition.
4. According to learned counsel appearing for the petitioner, the very inception of the criminal revision before the court below itself was bad in law inasmuch as once the complaint case got dismissed for want of prosecution on 14.06.2012, the net result of said dismissal of complaint amounts to acquittal of accused. Against the order of acquittal, it would have been only filing of CrMP under Sections 378(3) and 378(4) of CrPC. According to him, under no circumstances the revisional court could have gone into the veracity of the impugned order, as dismissal of complaint case amounts to acquittal of the accused. He relied upon the decision of Bombay High Court in case of **Om Gayatri and Co. Vs.**

State of Maharashtra, reported in 2006 (1) AIR Bombay 292. He also relied upon decision of Delhi High Court in case of **Kalpna Tyagi Vs. Sneh Lata Sharma**, reported in 2003 CrLJ 3395.

5. Per contra, learned counsel appearing for the respondent submitted that it is a case where the proceedings on 14.06.2012, on which date the complaint got dismissed for want of prosecution was infact only listed for further orders and was not fixed for appearance of the accused persons. Therefore, it cannot be said to be an order of acquittal, as it was only dismissal simplicitor for want of prosecution. He further, referring to the previous order sheets submits that even on the earlier dates of hearing also the matter was not fixed for appearance of the accused person, but was only for further orders. Thus, against dismissal of the complaint for want of prosecution, the only remedy left with him was to prefer a revision and which he had done. Therefore, it cannot be said that the court below has committed any illegality in allowing the revision. He relied upon the judgment of Kerala High Court in case of **Bristo Foods Pvt. Ltd. Vs. Hariharan Nair**, reported in 2007 CrLJ 1095. He further submits that that there are two necessary factors which has to be looked into at the time of dismissal of the complaint under Section 256 (1) CrPC i.e. (i) whether summons had been issued to the accused and (ii) whether the matter was fixed for appearance of the accused persons before the court.
6. According to counsel for the respondent, in the present case though summons were issued, but the fact remains that date on which the matter was listed i.e. 14.06.2012, the matter was only fixed for further

orders and it was not fixed for the appearance of the accused persons, and therefore, it would not amount to acquittal of the accused petitioner. It would only be a case where the complaint has been simplicitor dismissed for want of prosecution. Thus, prayed for rejection of the revision.

7. Having considered the rival contentions put forth on either side and on perusal of record, what clearly reflect is the fact that complaint in the instant case was filed as early as on 11.06.2012 and after the statement of complainant was recorded, the case was registered and summons were also issued to the respondent and thereafter despite summons, since the accused was not appearing, fresh summons, bailable warrant and non bailable warrant were also issued for appearance of accused person. Yet the accused did not enter appearance and the matter was fixed for further orders awaiting the service of warrant upon accused. Thus, the case relied upon by the respondent in case of Bristo Foods Pvt. Ltd. (Supra) would not be relevant to the facts of the present case.
8. In the instant case, both the issuance of summons and the matter being fixed for appearance of the respondent stand established. At this juncture, it would also be trite to refer to the judgment passed in case of Om Gayatri (Supra) wherein it has been held in very categorical terms that in a case where the magistrate has dismissed the complaint resulting in acquittal of the accused, the revision petition which was preferred before the Sessions court was unsustainable and the same was therefore held to be illegal and non-est in the eyes of law.
9. This view of Bombay High Court stands fortified from the earlier

decision of Delhi High Court in case of Kalpana Tyagi (Supra).

10. Considering the aforesaid two decisions of Bombay and Delhi High Courts, this court is also in total agreement to the views expressed by both the High Courts. Once, on a complaint being filed, if the Magistrate has taken cognizance and has issued summons and the matter was fixed for appearance of the accused persons, and if for any reason the complaint gets dismissed for want of prosecution, the net result would be the acquittal of the accused. Against the said order of acquittal, the only remedy provided is under the provisions of CrPC as has been enshrined under Sections 378(3) and 378(4) of CrPC.
11. Accordingly, for the aforesaid reasons, this court has no hesitation in reaching to the conclusion that filing of revision petition and the order passed by the revisional court in the peculiar facts and circumstances of the case is illegal and non-est in the eyes of law and the impugned order dated 20.05.2016 passed in Criminal Revision No.21/2013 deserves to be and is accordingly set aside.
12. Needless to mention that rejection/setting aside of the impugned order would not come in the way of the respondent, if he so chooses to challenge the said order dated 14.06.2012 before the appropriate court of law.
13. With the aforesaid observations, the petition is allowed.

Sd/-
(P. Sam Koshy)
Judge