

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 396 of 2017

Vijay John, S/o. Shri Suresh John, Aged About 32 Years, R/o. Nehru Nagar, Jabbal & Sons Gully, Bilaspur, Tahsil & District: Bilaspur, Chhattisgarh.

---- Petitioner

Versus

Stephen Jacob, S/o. Jacob Simon, Aged About 62 Years, R/o. Bhatia Garden City, A-61, Rajkishor Nagar, Mopka Road, Infront Of Dhan Mandy (Paddy Market), Bilaspur, Tahsil & District: Bilaspur, Chhattisgarh.

-----Respondent

For Petitioner	: Mr. Rajkamal Singh, Advocate
For Respondent	: Mr. Anshuman Shrivastava, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

17/08/2017

Heard.

1. Counsel for the petitioner submits that he had filed a complaint for prosecution of respondent under Section 138 of Negotiable Instrument Act, which was dismissed in his absence on 26.11.2016 by the trial Court and the respondent/accused was acquitted of the case. Hence, this petition has been brought for restoration of the complaint case.
2. Counsel for the petitioner has placed reliance on the judgment of Supreme Court in case of ***Punjab State Warehousing Corporation Faridkot Vs. M/s. Sh. Durga Ji Traders & Ors.***, reported in AIR 2012 SC 700, in which it was held that High Court should not have rejected the petition under Section 482 of Cr.P.C. on the ground of availability of alternative remedy without considering the seriousness of the nature of

the offence.

3. Counsel for the respondent has submitted that complaint case was at the stage of recording of complainant's evidence and continuously for number of date fixed, petitioner/complainant had failed to produce any evidence and the proceedings in the complaint case was at the stand still and finally on the date of hearing i.e. 26.11.2016, the complaint was dismissed in absence of the petitioner/complainant. It is submitted by the respondent that petitioner had alternative remedy available to file a revision before the Sessions Court. Hence this petition is not maintainable. Reliance has been placed on the judgment of Hon'ble Supreme Court in case of ***S. Rama Krishna Vs. S. Rani Reddy (D) by His LRS. & Ors., reported on 2008 STPL 11324 SC*** and the judgment of Himanchal Pradesh High Court in case of ***H.P. Agro Industries Vs. M.P.S. Chawla***, reported in ***1997 (2) Civil Court Cases 388 (HP)***, in which it has been held that no case can be left pending for an indefinite period, if such complaint is dismissed, should not be restored mechanically. In the judgment of H.P. Agro Industries, Himanchal Pradesh, High Court has also held that acquittal of accused under Section 256 of the Code provides for appeal against acquittal. Under these circumstances, the High Court should not exercise the inherent power to interfere with the impugned order.
4. The grounds taken in the petition is this, that the petitioner had no knowledge of the date fixed as he was not informed by the counsel and he was advised by his counsel to keep the recording of evidence in the complaint case in abeyance till the evidence of criminal case against petitioner could be completed.
5. The grounds raised by the petitioner do not hold any substance.

Petitioner/complainant had not appeared before the trial Court continuously on the dates fixed for hearing on 13.10.2016, 05.11.2016, 15.11.2016 and 26.11.2016. The advise of the counsel to keep recording of evidence in abeyance can not be regarded as a legal advise. Even if, such advise is given and followed by the parties concerned, as such can not be regarded as reasonable cause or proper explanation for absence of the petitioner on the date of hearing.

6. Considering this fact of this case, and that petitioner had remedy available for filing appeal before the Sessions Court, this petition appears to be devoid of any substance and it is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge