

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQ.A. No. 53 of 2017

Ajay Shukla, S/o. Sudama Prasad Shukla, Aged About 44 Years, R/o. Green Park Colony, Police Station Civil Line, Tahsil & District Bilaspur, Chhattisgarh.

---- Applicant

Versus

Santosh Singh Rajput, S/o. Jeevan Singh Rajput, Aged About 30 Years, R/o. Vivekanand Nagar, Torwa, Near Shekhar Kirana, Police Station Torwa, District Bilaspur, Chhattisgarh.

---- Respondent

For Applicant : Mr. Anand Shukla, Advocate

For Respondent : Mr. Achyut Tiwari, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

19/06/2017

Heard

1. This is an acquittal appeal against the order dated 16.01.2017 passed by the learned Judicial Magistrate First Class, Bilaspur, District Bilaspur, in a Complaint Case No.13059/2015, whereby the respondent/non-applicant has been acquitted of the charges under Section 138 of the Negotiable Instrument Act for the reasons for non-appearance of the complainant.
2. As per the case of the complainant/appellant, a case was filed under Section 138 of the Negotiable Instrument Act on 02.11.2015 and the Court after evaluating the facts and documents has registered the case under Section 138 of the Negotiable Instrument Act wherein the respondent entered his appearance on 18.11.2016 and was bailed out. Subsequently, after 18.11.2016, the case was fixed for 16.01.2017 for framing of charge. On 16.01.2017, the appellant and his counsel as also the non-applicant was absent; consequently, the JMFC dismissed the

complaint on the ground of non-appearance and acquitted the respondent.

3. Learned counsel for the appellant would submit that on a single date, the non-appearance was made and any dismissal of the appeal for single non-appearance will amount to denial of the right of the appellant. It is stated on that date the non-applicant/accused was also absent and no prejudice would have been caused to the non-applicant also. It is stated that the harsh measures like nature will defeat the very nature of providing justice and would cause irreparable loss to the appellant. Therefore, the complaint under Section 138 of Negotiable Instrument Act may be restored and the order of dismissal dated 16.01.2017 may be set aside.
4. Per contra, learned counsel for the non-applicant/respondent would submit that for non-appearance of the complainant, the complaint was dismissed and the order is well merited, which do not call for any interference by this Court.
5. Perused the order of the learned Court below. Perusal of the order and also the documents attached with the memo of appeal would show that the petition under Section 138 of Negotiable Instrument Act was filed against the respondent/non-applicant for the reasons that certain cheques were given to the appellant were bounced for want of sufficient fund. When the complaint was filed under Section 138 of Negotiable instrument Act, the Judicial Magistrate after evaluating the facts, documents, evidence and affidavit etc. took cognizance. The order sheet would show that on 18.01.2016 when the arrest warrant was issued, the non-applicant entered his appearance and furnished bail bond. After grant of bail to the non-applicant, the case was fixed for framing of charge on 16.01.2017. On 16.01.2017 the complainant was absent, the non-applicant/

accused was also absent, he was represented through his counsel and an application was filed for exemption from appearance of the non-applicant, which was allowed; however, since no appearance was made on behalf of the complainant, the complaint itself was dismissed. Therefore, it would show that on the singular occasion when the complainant, on the date of hearing of framing of charge, was absent, it lead to dismissal.

6. As has been laid down by the Supreme Court in case of ***Mohd. Azeem Vs. A. Venkatesh and Another***¹, wherein the Supreme Court has held that dismissal on single default is a very strict and unjust attitude resulting in failure of justice. In the instant case also since the case was fixed for framing of charge on a singular date on 16.01.2017, the case was dismissed. Therefore, in the facts of this case, if such dismissal is allowed to be continued, it may result to failure of justice.
7. Taking into fact that for a singular non-appearance, the complaint was dismissed, the order dated 16.01.2017 passed in Complaint Case No.13059/2015 is set aside. The case is remanded back to the Trial Court to adjudicate a fresh from the stage of its dismissal.
8. It is directed that both the parties shall remain present before the trial Court on 27th of July, 2017 and the trial Court in turn shall proceed further with the case.

Sd/-
(Goutam Bhaduri)
Judge

Ashok

1 (2002) 7 SCC 726