

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 86 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

---- Appellant

Versus

Rajendra Kumar Sonkunwar Aged About 50 Years R/o Om Nagar, Jarhabhjata,
Vankatesh Niwas, Police Station Civil Line Bilsapur, Tahsil & District- Bilsapur,
Chhattisgarh.

----Respondent

18/07/2017	Shri Anand Shukla, counsel for the appellant. No appearance is made on behalf of the respondent even in the second call. Heard. 1. This is an acquittal appeal against the order dated 12/01/2017 passed by the learned Judicial Magistrate First Class-I Bilaspur in complaint Case No.13061/2015 whereby the respondent/non-applicant have been acquitted of the charges under Section 138 of Negotiable Instruments Act for the reason of non-appearance of the complainant. 2. As per the case of the complainant a complaint was filed on 3/11/2015 under Section 138 of the Negotiable Instruments Act by the appellant. After filing of the same, it was registered on 5/12/2015 and respondent entered his appearance and was enlarged on bail. Subsequently, on 5/11/2016 case was fixed for evidence. On that date case was referred to the Lok Adalat which was fixed on 12/11/2016. On 12/11/2016 before Lok Adalat no compromise was settled. Consequently, case was fixed before regular bench on 12/01/2017. On 12/01/2017 complainant was absent and for the respondent an application for exemption was filed and exemption for non-applicant was allowed. However, for the reason complainant failed to appear on the date complaint was dismissed. Therefore, this challenge. 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 12/01/2017 may be set aside.

4. No appearance is made on behalf of the respondent even in the second call.

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 cheques was given to the appellant was 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.

6. Subsequently case continued and on 5/11/2016 when case was fixed for evidence it was referred to the Lok Adalat on 12/11/2016. On 12/11/2016 parties were absent and therefore case was fixed on 12/01/2017 before regular bench for evidence. On 12/01/2017 complainant was absent as also respondent was also absent, however case was dismissed for want of absence of the complainant. Therefore, it would show on the single occasion when complainant was absent on the date of hearing of evidence same was dismissed.

7. As has been laid down by the Supreme Court in case of **Mohd. Azeem Vs. A. Venkatesh and Another (2002) 7 SCC 726**, wherein the Supreme Court has held that dismissal on single default is a very strict and unjust attitude resulting in failure of justice.

8. In the instant case also it would show that on the single date on 12/01/2017 complainant remained absent and it was dismissed. As such,

if dismissal is allowed to be continued, it may result in failure of justice.

9. Taking into fact that for a singular non-appearance, the complaint was dismissed, the order dated 12/01/2017 passed in Complaint Case No. 13061/2015 is set aside. The case is remanded back to the Trial Court to adjudicate afresh from the stage of its dismissal.

10. It is directed that both the parties shall remain present before the trial court on 28th August, 2017 and the trial court in turn shall proceed with the case.

Sd/-

(Goutam Bhaduri)

JUDGE

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