

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 89 of 2017

- Giriraj Singhania S/o Shri Maloo Ram Singhania, Aged About 46 Years R/o Q- 5, Sales Tax Colony, Shankar Nagar Khamardih, Raipur, Chhattisgarh. --- **Appellant**

Versus

- Sandeep Agrawal R/o House No. 48, Aishwarya Residency, G. E. Road, Telibandha, Raipur, Chhattisgarh. --- **Respondent**

For the applicant : Mr. Ankit Singhal, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

10.05.2017

1. Initially the case was registered as Cr.M.P., wherein application for leave to file appeal was also filed. By order dated 09.03.2017 application for condonation of delay in filing the appeal is allowed and notice was directed to be issued on Cr.M.P., along-with application seeking leave to appeal and despite the service of notice, the respondent has not chosen to appear. Again when the matter was taken up on 03.05.2017, the Cr.M.P. No.316/2017 was directed to be registered as Acquittal Appeal and now it has been registered as Acquittal Appeal bearing No.89 of 2017.
2. The challenge in this appeal is to the order dated 07.10.2015 whereby the complaint filed by the appellant u/s 138-A of Negotiable Instrument Act (for short N.I. Act), read with section 420 of IPC was dismissed for non-prosecution.
3. A perusal of the order sheets of the courts below would show that a complaint was filed by appellant Giriraj Singhania u/s 138 of N.I. Act read with section 420 of IPC and thereafter on

26.09.2014, the complaint was registered u/s 138 of N.I. Act and the notices were issued. After issuance of notice, the respondent entered his appearance on 12.12.2014 and thereafter he was bailed out and his bail bonds were furnished. Subsequently on 09th April, 2015 the case was transferred from the court of one JMFC to the court of another JMFC. Thereafter the case was fixed on different dates i.e., 20.07.2015 & 31.08.2015 wherein the complainant was represented through his counsel. However, when the matter was taken up on 07.10.2015, the complainant failed to appear in person nor represented through his counsel, therefore, the complaint was dismissed. A perusal of the order sheets would show that on all the dates, the complainant represented through his counsel and only on one day i.e., 07.10.2015, the complainant was absent and accused also remained absent on all the dates and only for one default of appearance on 07.10.2015 the complaint was dismissed and the accused was discharged.

4. Considering such facts situation of the case, in the opinion of this Court it would be appropriate in the interest of justice if one more opportunity is given to the complainant to appear and prosecute his case on merits as the dismissal for default of appearance on one date would amount to too technical approach which may lead to illegality. Therefore, further opportunity is granted to the appellant to prosecute his complaint in accordance with law.
5. Consequently the order dated 07.10.2015 passed by the JMFC, Raipur, whereby the complaint of the appellant was dismissed and the respondent was discharged, is set aside. Now the complainant shall appear in person before the trial

Court and thereafter, necessary issuance of summons may be made to the respondent for his appearance. Thereafter, the court below shall be obliged to proceed further and decide the complaint in accordance with law.

6. With the above direction, this appeal stands disposed of.

Sd/-

**GOUTAM BHADURI
JUDGE**

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