

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQ. A. No. 100 of 2017

Smt. Laxmi Shrivastava, aged about 40 years, W/o. Shri Anil Srivastav, R/o. Nisha Beauty Parlour, Dr. Rajendra Nagar, Near Goverdhan Chowk, Raipur (C.G.)

----Applicant

Versus

Smt. Sangeeta Yadav, aged about 36 years, through : Smt. Anjani Yadav, R/o. Katora Talab, Lane Beside Hum Tum Fancy Store, Tahsil and District – Raipur (C.G.)

---- Respondent

For Appellant/complainant : Mr. Tridib Bhattacharya, Advocate

For Respondent : Mr. L.C. Dash, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

18/05/2017

1. Challenge in this appeal is to the dismissal order dated 16.01.2017, passed in Criminal Case No.465/2015 by the learned Judicial Magistrate First Class- Raipur, District – Raipur (C.G.), whereby the complaint preferred by the applicant U/s. 138 of Negotiable Instrument Act was dismissed for non-appearance of the complainant.
2. Case of the appellant is that a complaint under Section 138 of Negotiable Instrument Act was filed on 08.01.2015, wherein, the evidence of the parties were recorded, subsequently when the case was fixed for defence witnesses inadvertently, the counsel of the complainant noted the date i.e. 16.02.2017, though the date was

fixed as 16.01.2017. Consequent to it for the non-appearance, the complaint was dismissed. It is contended that the dismissal being too strict, the same may be set-aside and the complaint may be directed to be restored and may be decided on merits. It is further prayed the acquittal of the respondent may be set-aside accordingly.

3. Per contra, learned counsel appearing on behalf of the respondent vehemently opposes the same.
4. I have heard the learned counsel for the respective parties and perused the order sheet.
5. Perusal of the order sheet would show that on 08.01.2015, complaint was filed by the appellant U/s. 138 of Negotiable Instrument Act. Subsequently, the matter came up for hearing on 05.02.2015, wherein the Court after perusal of the affidavit prima-facie found that the case is made out U/s. 138 of Negotiable Instrument Act and issued notice to the respondent. Subsequently, the case was fixed on 23.05.2015, 25.06.2015, 04.09.2015, 13.10.2015, 27.11.2015, 22.12.2015, 12.01.2016, 17.02.2016, 04.03.2016. On 04.03.2016 the complainant was examined, cross-examined and discharged. Subsequently, the case again proceeded further on 06.05.2016, wherein also, statement of another witness P.W.-2 was recorded and the case of the complainant was closed and the case was fixed for 09.05.2016. Thereafter, another application was filed U/s. 311 of Cr.P.C. which eventually adjudicated on 19.07.2016 and it was dismissed. Then the case was fixed for statement of the accused on 27.07.2016.

Subsequently, the presiding officer was transferred and in between 10 dates were passed and lastly on 09.01.2017, the case was fixed for 16.01.2017. The order sheet would show that in the margin, the date was noted to be 16.02.2017 by the complainant's advocate, however, since the date was fixed on 16.01.2017, the case was taken on 16.01.2017 and the case was dismissed on singular default in appearance on the part of the complainant.

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 evidence of complainant were recorded and the case was fixed for defence evidence and on that date on 16.01.2017, due to wrong noting of the date, the case was ultimately dismissed on 16.01.2017, therefore, eventually for one singular non-appearance, the case was dismissed and if the same is allowed to be continued, it may result to failure of justice. Since the evidence was already recorded that of the complainant and their witnesses, the Court should have applied its mind whether the appearance of the complainant was essential on that date for the progress of the case or not.
7. Perusal of the order sheet would show that some mistake was committed by the counsel, however, the presence of the complainant was not essential on the date for the further proceeding. Therefore, dismissal may result into serious prejudice to the complainant as the evidence of complainant was already

1 (2002) 7 SCC 726

adduced.

8. Taking into such fact, dismissal order dated 16.01.2017, passed in Criminal Complaint Case No.465/2015 is set-aside. The case is remanded back to the trial Court to adjudicate a fresh from the stage of its dismissal.
9. It is directed that both the parties shall remain present before the trial Court on 5th of July, 2017 and the trial Court in turn shall proceed further with the case.

Sd/-
(Goutam Bhaduri)
Judge