

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 117 of 2017**

- Anukdas S/o S/o Shri Shivmangal, Aged About 35 Years Caste- Panika, Occupatin - Service, Resident Of Domanhil, Colliery, Police Station Chirmiri, Tahsil- Khadgawa, District- Korea, Chhattisgarh.

---- Appellant**Versus**

1. Praduman Tiwari S/o D.P. Tiwari, Aged About 46 Years Occupation - Service In The Year Of 2007, As Station Officer, Police Chowki Korea, Police Station Chirmiri, District- Korea, Chhattisgarh.
2. Deepak S/o Bramhadev Singh, Occupation - Service In The Year Of 2007, As Constable , Police Chowki Korea, Police Station Chirmiri, District- Korea, Chhattisgarh.
3. Shesh Narayan, S/o Bijohar Singh, Occupation - Service In The Year Of 2007, As Constable , Police Chowki Korea, Police Station Chirmiri, District- Korea, Chhattisgarh.

--- Respondents

For the Appellant : Mr. Sunil Tripathi, Advocate

For the Respondent : Mr. Parag Kotecha, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Judgment/Order on Board****18.07.2017**

1. The instant appeal is against the order dated 29.06.2015 passed by the learned Judicial Magistrate First Class, Manendragarh in Criminal Case No.147 of 2011 (Anuk Das Vs. Padman Tiwari and others) wherein the respondent non-applicant has been acquitted of the charges u/s 452, 294, 323/34, 384 and 506-B IPC.
2. As per the case of complainant, Anup Das filed a complaint under sections 384, 294, 323, 452, 506 read with section 34

of IPC against Padman Tiwari, Deepak and one Shesh Narayan wherein the complaint was registered on 06.12.2007. After registration of the complaint the said order of registration was challenged before the Sessions Judge in Criminal Revision bearing No.719/2007 wherein the records were called. Subsequently after dismissal of the revision, the records came back to the Court of JMFC on 29.6.2015 and on that since the complainant was absent the complaint was dismissed.

3. Learned counsel for the appellant would submit that on single day non-appearance was made and any dismissal of complaint like nature for single day non-appearance will lead to denial of right of the applicant. It is stated that the facts of the case would show that after registration of the complaint, the entire records were called by the Sessions Court in exercise of power of revision and after adjudication of the revision when it came back, on the day one it was dismissed for non appearance. He submits that dismissal on single non-appearance is very harsh and unjust attitude resulting in failure of justice and it would cause irreparable loss to the appellant. Therefore, the order dated 29.06.2015 may be set aside.
4. Per contra, learned State Counsel vehemently opposes the same. It is submitted that the non-appearance was deliberate and no reasons were assigned, therefore, the Court below has no other way except to dismiss the case for non-appearance and the order of the Court below is well merited which do not call for any interference.
5. Perused the case file and the order of the court below. The

order sheets would reflect that the complaint was filed on 02.11.2007 before the JMFC who after perusal of the complaint directed for registration of complaint and accordingly the complaint was registered u/ss 452, 294, 323/34, 384 & 506-B of the IPC. Subsequently the order sheet would reflect that such registration of complaint was subject to challenge in Criminal Revision bearing No.719 of 2017 wherein the entire record was called. The order sheet would further show that the entire record went to the court of Sessions Court and the revision was pending adjudication. Subsequently on 29.06.2015, the original record came back after dismissal of the criminal revision. On that date i.e., 29.6.2015, the court recorded absence of complainant and dismissed the complaint for non-appearance of the complainant. It appears that the original record of the complaint case was pending before the court of sessions for adjudication of revision and after the dismissal of revision, the record came back and at the same time when the complaint remained absent for single day before the trial Court, the complaint was dismissed.

6. It has been laid down by the Supreme Court in case of ***Mohd. Azeem Vs. A. Venkatesh and another (2002) 7 SCC 726*** that dismissal on single default is a very strict and unjust attitude resulting in failure of justice. in the instant case also the facts would show that the original record having been tied up with the Court of Sessions, there was no occasion for the complainant to appear before the court of JMF, therefore, it would be futile for the complainant to appear before the JMFC when the entire records were

requisitioned by the court of sessions. After dismissal of the revision, the records came back to the court of JMFC where the complaint was dismissed for single non-appearance. As has been laid down in case of *Mohd. Azeem Vs. A Venkatesh (supra)*, the dismissal on single default amounts to not only very strict attitude but also unjust resulting in failure of justice. Therefore, in the facts and circumstances of the case if the dismissal of complaint is allowed to continue it would lead to irreparable loss and may cause failure of justice.

7. Taking into such fact that the complaint was dismissed for the default of single non-appearance and in view of the decision of the Supreme Court, the order dated 29.06.2015 passed in Criminal (complaint) Case No.147 of 2011 is set aside. The case is remitted back to the court of JMFC to adjudicate the same from the stage of dismissal.
8. It is directed that both the parties shall remain present before the trial Court on 21st August, 2017.
9. Accordingly, the appeal is allowed.

**Sd/-
GOUTAM BHADURI
JUDGE**