

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 221 of 2017

Anil Hinduja, S/o. Late Sewak Ram ji Hinduja, Aged About 29 Years, R/o. House No. 24 Dewika Vihar Rajkishore Nagar, Police Station Sarkanda, Tehsil & Revenue & Civil District Bilaspur, Chhattisgarh.

---- Appellant

Versus

Vicky Khemani, S/o. Shankar Lal Khemani, Aged About 29 Years, R/o. C/o. Deepak Kumar Old Power House Torwa Tehsil & Revenue & Civil District Bilaspur, Chhattisgarh.

---- Respondent

For Appellant : Mr. P.K.Tulsyan, Advocate

For Respondent : Mr. Rishi Sahu, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

09.11.2017

Heard

1. This petition is against the dismissal of the complaint case under Section 138 of the Negotiable Instrument Act.
2. Learned counsel for the appellant submits that the complaint was filed on 10.09.2014 which was registered. Subsequently, the case was fixed for 06.01.2015 wherein the process was also paid. Thereafter, there has been some wrong noting of the date was made by junior counsel, consequently, appearance could not be made on 27.01.2015 and the complaint was dismissed and the respondent was acquitted. He further submits, in view of this, one opportunity may be given to decide the case on merits as on the date of dismissal, the accused itself was also not served and there was no deliberate non-appearance was made by the complainant. Consequently, the order of acquittal may be set aside and the case may be restored.

3. Learned counsel for the respondent opposes the same.
4. Perused the record of the Court below. It shows that on 10.09.2014 complaint was filed alongwith an affidavit, which was registered on that date by the Judicial Magistrate First Class. Subsequently, the date was given on 16.10.2014 and on 16.10.2014 the case was transferred to other Court and the case was fixed on 06.01.2015. Thereafter, two dates were there on 22.01.2015 & 27.01.2015 and eventually the complaint was dismissed for non-appearance.
5. Perusal of the order sheet would show that no exorbitant delay was caused and the case was transferred from one Judicial Magistrate to another. The record would also suggest that the accused was also not served. After going through the record and the complaint, this Court is of the opinion that one chance may be afforded to the complainant to prosecute his complaint on merits and no prejudice would be caused to the accused/respondent and the order sheet shows that short dates were intervened, as such, the order of dismissal of complaint dated 27.01.2015 is set aside. The complaint is restored back to its original number and remanded back to the trial Court to adjudicate afresh from the stage of its dismissal. The parties shall appear before the Judicial Magistrate First Class on 30.01.2018. The Registry is directed to send back the original record forthwith.
6. In view of the above, the petition is allowed.

Sd/-
(Goutam Bhaduri)
Judge