

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQ.A. No. 143 of 2016

Shahzade Ahmad, S/o. Abdul Hamid, Aged About 50 Years, R/o. Afroz Badi, Police Station Moudha Para, District Raipur, Chhattisgarh.

---- Applicant

Versus

Gulam Murtuza, S/o. Ram Chandra Biswal, Presently R/o. Aalam Niwas, Nurani Chouck, Kobadi Gali, Raja Talab, Police Station Civil Lines, Tahsil & District Raipur, Chhattisgarh.

---- Respondent

For Applicant : Mr. Devershi Thakur, Advocate

For Respondent : Mr. Syed Imtiaz Ali, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

21/09/2017

Heard

1. This acquittal appeal is against the dismissal of a complaint by an order dated 23.04.2016. The complaint case was bearing No.38/2013 under Section 138 of Negotiable Instrument Act. The complaint was dismissed for non-appearance of the complainant on the date fixed.
2. The case has a chequered history as would be evident on the record that the complaint was filed on 07.06.2012 alleging that the cheque issued by the respondent/ accused was bounced for want of fund. Subsequently, the complaint was registered on 16.01.2013 thereafter the notices were issued, frequent dates were given as the notices could not be served despite payment of process and eventually the notice was served in the month of October, 2013 and the accused entered his appearance. Thereafter, the case again went on for different dates for evidence and for some reason or other, the dates were adjourned and on 23.02.2016 the complainant who was represented by his counsel,

date was given on 23.04.2016. On that date since no one appeared on behalf of the complainant, the complaint was dismissed for want of prosecution and the accused stands acquitted being discharged. The record would show that against the dismissal, a revision was filed by the complainant before the Sessions Judge, the same was allowed by the order dated 05.08.2016, which was subject of challenge in CRMP No.858/2016 before the High Court on the ground that the Sessions Judge do not have the power to entertain such revision, as the nature of order stands in acquittal. This Court by an order dated 29.09.2016 allowed the revision and set aside the order of the Sessions Court with a liberty to challenge the order dated 23.04.2016. Thereby, the order dated 23.04.2016 was revived again and this acquittal appeal is against such order.

3. The order sheets of the Court below were seen, it appears that the complainant did appear in different dates, however, on 23.02.2016 he did not appear and he was represented by his counsel and next date was given on 23.04.2016 wherein no one appeared and the complaint case was dismissed.
4. As has been laid down by the Supreme Court in case of ***Mohd. Azeem Vs. A. Venkatesh and Another*** reported in **(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. In this case, examination of the order sheets would also show that in different dates the complainant did appear and one single date on 23.02.2016 he represented by his counsel and subsequent thereto he did not appear and as such the complaint was dismissed.

5. Taking into fact that for a singular non-appearance, the complaint was dismissed, this Court is not agreeable to endorse the same and accordingly the order dated 23.04.2016 passed in Complaint Case No.38/2013 is set aside. The case is remanded back to the Trial Court to adjudicate a fresh from the stage of its dismissal.
6. It is directed that both the parties shall remain present before the trial Court on 26th October, 2017 and the trial Court in turn shall proceed further with the case.

Sd/-
(Goutam Bhaduri)
Judge