

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 731 of 2016**

Dr. P. Raghavan S/o Late K. S. Perumal Raja Aged About 69 Years
 R/o D-2, Govt. Engineering College Ground, Raipur Chhattisgarh
 Presently R/o At Door No. 8, Moulshree Vihar Colony, Housing
 Board V.I.P. Road, Raipur Chhattisgarh. **---- Petitioner**

Versus

1. Dainak Bhaskar Samachar Patra Dainik Bhaskar Press Parivar Maharana Pratap Parivar Police Station Habib Ganj, Bhopal M.P.
2. Ramesh Chandra Agrawal (Dealeated) As Per Honble Court Order Dated 23/10/2018
3. Akhilesh Khandekar Editor, Dainak Bhaskar Samachar Patra (Bhopal Edition), Dainik Bhaskar Press Parivar, Maharana Pratap Nagar, Police Station Habib Ganj, Bhopal M.P.
4. Dharmendra Pegwar Correspondent, Dainik Bhaskar Press Parivar, Maharana Pratap Nagar, Police Station Habib Ganj, Bhopal M.P.
5. Sudhir Agrawal S/o Ramesh Chand Agrawal Publisher, Dainik Bhaskar Press Parivar (Raipur Edition) Dainak Bhaskar Press Rajbandha, Press Complex, Thana Modhapara, G.E. Road Raipur Tahsil And Distt. Raipur Chhattisgarh.
6. Diwakar Mukti Bodh S/o Late Sh. M. Mukti Bodh Editor, Dainik Bhaskar Press Parivar (Raipur Eidition) Dainak Bhaskar Press Rajbandha, Press Complex, Thana Modhapara, G. E. Road, Raipur Tahsil And Distt. Raipur Chhattisgarh.
7. State Of Chhattisgarh Through Collector, Raipur Chhattisgarh.

---- Respondents

For Petitioner:	Smt. Fouzia Mirza, Advocate.
For Respondents No.1 to 5:	Shri Arvind Shrivastava, Advocate.
For State/Respondent No.6:	Shri S.R.J. Jaiswal, Panel Lawyer.

Single Bench:Hon'ble Shri Sanjay Agrawal, J
Order On Board

04.12.2018

1. This Petition has been preferred under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') against the order dated 19.05.2016 passed by the Third Additional Sessions Judge, Raipur (C.G.) in Criminal Revision No.253/2011, by which the learned Revisional

Court while affirming the order dated 05.08.2011 passed by the Judicial Magistrate, First Class, Raipur (C.G.) in Criminal Case No. 21/2010 has dismissed the Revision Petition.

2. Smt. Fouzia Mirza, learned counsel for the Petitioner submits that the order impugned as passed by the Revisional Court affirming the order of the trial Court is apparently contrary to law. She submits further that the complainant was continuously prosecuting the matter and could not appear when the matter was dismissed for non-prosecution on 05.08.2011 as he was out of station for some urgent work and could not inform to his counsel in this regard. She submits further that the Revisional Court while referring the order sheets dated 08.09.2010, 29.11.2010, 04.06.2011 and 05.08.2011 has erred in observing that the complainant was absent, however, his absence was in fact condoned. Therefore, the Revisional Court has committed an illegality in affirming the order of the trial Court. She, therefore, submits that the order impugned be set aside and the complaint petition as dismissed on 05.08.2011, affirmed further by the Revisional Court, be restored to its original number. In support, she placed her reliance upon the decision rendered in **Mohd. Azeem Vs. A. Venkatesh And Another**” reported in **2002 (7) SCC 726**

3. On the other hand, Shri Arvind Shrivastava, learned counsel for Respondents No. 1 to 5 while supporting the order impugned submits that there is no infirmity in the order impugned as passed by the Revisional Court while affirming the order of the trial Court. According to him, since the complainant was not present on 05.08.2011, therefore, the trial Court as well as the Revisional Court has rightly dismissed the Complaint Petition for non-appearance of the complainant. He, therefore, submits that

the Petition as framed deserves to be dismissed.

4. I have heard learned Counsel for the parties and perused the entire record carefully.

5. A complaint case was filed by the Petitioner against the Respondents in relation to the offence punishable under Section 500 read with Section 34 of IPC. After registering the case as such, the trial Court has proceeded with the matter and when the complainant was absent on 05.08.2011, it was dismissed in default. The said dismissal of the complaint was affirmed by the Revisional Court while observing at paragraph 5 of its order that since the complainant was not present on certain occasions like 08.09.2010, 29.11.2010, 04.06.2011 and 05.08.2011 and also has failed to deposit requisite process fee, the Complaint Case is rightly dismissed by the trial Court. I have examined those order sheets and a perusal of the said order sheets, i.e. 08.09.2010, 29.11.2010 and 04.06.2011 would, however, show very specifically that on these dates although the complainant was absent but his non-appearance was condoned after considering the application submitted in this regard. In such circumstances, the observations as made by the Revisional Court cannot be held to be sustainable in view of the said facts. While considering the application for restoration of Complaint Case dismissed in default on 05.08.2011, the Court below ought to have adopted a liberal view in order to provide substantial justice to the parties.

6. At this juncture, the principles laid down in the matter of “**Mohd. Azeem Vs. A. Venkatesh And Another**” reported in **2002 (7) SCC 726**, is to be noted where it has been observed by the Supreme Court at paragraphs 3 & 4 as under:

“3. From the contents of the impugned order of the High Court, we have noticed that there was one singular default in appearance on the part of the complainant. The learned Judge of the High Court observes that even on earlier dates in the course of trial, the complainant failed to examine the witnesses. But that could not be a ground to dismiss his complaint for his appearance (*sic* absence) on one single day. The cause shown by the complainant of his absence that he had wrongly noted the date, has not been disbelieved. It should have been held to be a valid ground for restoration of the complaint.

4. In our opinion, the learned Magistrate and the High Court have adopted a very strict and unjust attitude resulting in failure of justice. In our opinion, the learned Magistrate committed an error in acquitting the accused only for absence of the complainant on one day and refusing to restore the complaint when sufficient cause for the absence was shown by the complainant.”

7. Considering the facts and circumstances of the case in the light of the aforesaid principles, I am of the view that while dismissing the Revision Petition the Court below has committed an illegality while adopting the hyper technical view and that too by observing the order sheets in an incorrect manner. As a consequence of it, the order impugned as passed by the Revisional Court on 19.05.2016 is hereby set aside.

8. The Petition is accordingly allowed. It is directed that the Criminal Case No.21/2010, which was dismissed for non-prosecution, is hereby restored to its original number. Parties are directed to appear before the concerned trial Court i.e. before the learned Judicial Magistrate, First Class, Raipur on 15.02.2019. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE