

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 182 of 2017**

- Dalit Kumar Kurre S/o Late Shri Kamdeo Kurre, Aged About 43 Years R/o Vikas Nagar/ Sheetlapara, Kondagaon, District Kondagaon, Chhattisgarh.

---- Appellant**Versus**

1. Motiram Bandhe S/o Dashrath Bandhe, aged about 49 years, R/o Chiraipadar (Chidaipadar), Post Koalchur Chowki Bastar, P.S. Kotwali, Jagdalpur, District Bastar (CG)
2. State of Chhattisgarh Through District Magistrate Jagdalpur, District Jagdalpur, Chhattisgarh.h

---- Respondent

For Appellant	:	Mr. Sanjay Pathak, Advocate.
For Respondent 1	:	Mr. Ravindra Sharma and Mr. P.K. Tusyan, Advocates
For Respondent 2	:	Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****30/11/2018**

1. This appeal is preferred under Section 378 (4) of the Code of Criminal Procedure, 1973 against order of discharge dated 10.9.2015 passed by Chief Judicial Magistrate, Bastar at Jagdalpur(C.G.) in Complaint Case No. 229/2014 filed under Section 138 of the Negotiable Instrument Act, 1881(for short the Act 1881) for want of prosecution.
2. It appears from the order-sheet of the said court that the case was fixed for arguments on an interim application on 10.9.2015. For arguments on interim application, personal appearance of the appellant/complainant was not required and the trial Court has dismissed the complaint for want of prosecution.

3. Learned counsel for the appellant submits that dismissal of complaint for single default is not proper and the trial Court should have afforded another opportunity of hearing to the appellant.
4. On the other hand learned counsel appearing for respondent No.1 submit that the finding of the trial Court is just and proper and it is not liable to be interfered with invoking jurisdiction of appeal.
5. In the matter of **Associated Cement Co. Ltd. Vs. Keshvanand** reported in **(1998) 1 SCC 687**, Hon'ble the Apex Court held as under:-

“18. Reading the Section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the Magistrate shall not acquit the accused. Second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day the Magistrate has the power to dispense with his attendance and proceed with the case. When the Court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the Court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must, therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice.”

6. Again, in the matter of **Mohd. Azeem Vs. A. Venkatesh & another** reported in **(2002) 7 SCC 726**, Hon'ble the Apex Court held that in a proceeding under Section 138 of the Negotiable Instruments Act, 1881, the single default in appearance on the part of the complainant, the dismissal of the complaint case is not proper, legal and justified.
7. Dismissal of complaint was not the only option before the trial court. The trial court should have adjourned the case for some other day as

provided under Section 256 (1) of Cr.P.C. but that is not done in the present case. Courts should try to decide the case on merits and it should not be sent to the record room without deciding the issues between the parties. As dismissal for single default is not just and proper, the order passed by the trial Court is not sustainable.

8. Accordingly, order passed by the trial court is set aside allowing the petition. The trial court is directed to proceed with the case in accordance with law after providing opportunity to both the parties and decide the issues between the parties on merit.
9. Both the parties shall appear before the trial court for further proceedings on 15th January, 2019.

**Sd/
(Ram Prasanna Sharma)
Judge**